

# FINDING OF NO SIGNIFICANT IMPACT

## San Joaquin River Restoration Program Eastside Bypass Conveyance Project

United States Department of the Interior  
Bureau of Reclamation  
Mid-Pacific Region  
Sacramento, California

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### BACKGROUND

In 1988, a coalition of environmental groups, led by the Natural Resources Defense Council (NRDC), filed a lawsuit challenging the renewal of long-term water service contracts between the United States and Central Valley Project Friant Division. After more than 18 years of litigation, *NRDC, et al., v. Kirk Rodgers, et al.*, a settlement was reached (Settlement). On September 31, 2006, the Settling Parties, including NRDC, Friant Water Users Authority (now represented by the Friant Water Authority), and the U.S. Departments of the Interior and Commerce, agreed on the terms and conditions of the Settlement, which was subsequently approved by the U.S. Eastern District Court of California on October 23, 2006. The Settlement establishes two primary goals:

- Restoration Goal – 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.
- Water Management Goal – To reduce or avoid adverse water supply impacts on all of the Friant Contractors that may result from the Interim Flows and Restoration Flows provided for in the Settlement.

The San Joaquin River Restoration Program (SJRRP) is being implemented in accordance with the Settlement by the U.S. Bureau of Reclamation (Reclamation), U.S. Fish and Wildlife Service (Service), National Marine Fisheries Service (NMFS), the California Department of Water Resources and the California Department of Fish and Wildlife (DFW).

Consistent with the Restoration Goal, Reclamation is proposing a project to restore flow capacity to the low flow channel within the Eastside Bypass. The Project is located approximately 19 miles southwest of the city of Merced, in the vicinity of El Nido Road and the southern extent of the Merced National Wildlife Refuge (MNWR). The Project includes removing accumulated sediments in the channel, constructing a low-flow channel, and removing the low flow crossing and inoperable culvert currently impeding flows at El Nido Road, and is further described in the attached Environmental Assessment (EA).

The following environmental commitments and best management practices will be implemented to avoid and minimize any potential impacts to the human environment, as described in the attached EA:

- The limits of Project disturbance in the field will be identified with stakes or other markers, which will be removed once work is finished.
- Staging will occur outside of waters of the U.S., east of the bypass, in an area of the farm equipment stockyard used for the adjacent agricultural operation.

- All work will occur in the summer months of July and August when the Eastside Bypass is dry and chance for storm events is low. Once channel capacity is obtained in the lower Eastside Bypass, Settlement Exhibit B calls for Restoration Flows in all months of the year. However, the SJRRP flow schedule on an annual basis follows the Restoration Administrator's recommendation and will likely call for no or very limited flows in the summer of the next five years. Construction timing will be carefully planned such that excavation occurs during the driest conditions in the Eastside Bypass. Prior to construction activities for the initial excavation activities and potential maintenance activities, Reclamation will coordinate with the Implementing Agencies on the specific actions planned to dewater the action area, if necessary, and develop a plan for potential fish rescue activities, as appropriate.
- In order to keep the Project area dry prior to and during the Project, the MNWR will temporarily shut off the inlet valve near the east levee that provides water to the refuge.
- If a high water table is reached during excavation, water will be pumped and discharged onto the dry ground surface outside of the inner low-flow channel, away from the levees and nearby drainage in accordance with applicable Clean Water Act Section 401 and 402 permits. Pumped and discharged water will dissipate by infiltration. No surface runoff will be allowed.
- Active construction sites will be watered 2-3 times per day sufficient to keep soil moist enough so that fugitive dust emissions will be minimized.
- A Spill Prevention, Control and Countermeasure Plan will be required where release of oil and oil products have the potential to enter into the channel in quantities that may be harmful. Spill prevention kits will be in close proximity to the Project site at all times and workers will be trained in their use.
- The contractor will be required to keep their equipment in good working condition in order to prevent leaks and spills of petroleum products or other fluids into waters of the U.S.
- The contractor or Reclamation will prepare and implement a Storm Water Pollution Prevention Plan that includes details on the installation and monitoring of erosion control devices.
- Tracked out material on the paved portion of El Nido Road near the Project site will be swept up once a day to minimize fugitive dust

emissions, trackout, and sediment in storm water runoff.

- Workers will tightly secure covering or maintain at least 2 feet of freeboard on trucks hauling excavated or fill material.
- Excavating activities will be suspended if wind speeds exceed 25 mph.
- Vehicles will observe a speed limit of 15 mph on access roads within the Project area.
- All equipment will be washed prior to arriving at the Project site to remove soil and seeds to prevent spread of noxious weed seeds.
- Within 10 days before the start of work on the Project (including future maintenance excavations), a qualified biologist will survey accessible areas within the immediate Project footprint for nesting migratory birds, particularly ground-nesting birds. If an active nest is found, Reclamation will coordinate with a qualified biologist, the Service and DFW, as appropriate, to identify a suitable construction-free buffer around the nest. The buffer(s) will be identified on the ground with flagging, fencing or by other easily visible means, and will be maintained and monitored by a qualified biologist until it has been determined that the young have fledged or that the nest is no longer active.
- Per the Service's 2011 *Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance* and 1999 *Survey Protocol* (Service, 2011; Service, 1999) a Service-approved biologist will conduct pre-construction protocol level surveys for San Joaquin kit fox (SJKF), signs or presence and dens in the Project footprint and within a 200-foot area outside of the Project footprint. The survey will be conducted no less than 14 days and no more than 30 days prior to the initiation of any ground-disturbing activities associated with the Project. If SJKF, SJKF signs, or active SJKF dens are found during the survey, Project work will not begin until the Service has been contacted and appropriate consultation has been completed.
- All Project-related vehicle traffic will be restricted to established roads, and designated Project areas. In order to reduce impacts by Project-related vehicles, workers will observe the following:
  - Work on the Project will not occur at night when SJKF are most active (*i.e.* start no less than 30 minutes after sunrise and stop work no less than 30 minutes prior to sunset).
- All food-related trash items such as wrappers, cans, bottles, and food scraps will be disposed of in securely closed containers and removed at least once every day from the entire Project site.

- To prevent inadvertent entrapment of SJKF or other animals during the excavation phases of the Project, all excavated, steep-walled holes or trenches more than 2-feet deep will be covered at the close of each working day by plywood or similar materials. If the trenches cannot be closed, one or more escape ramps (with slopes greater than or equal to 1:1) constructed of earthen-fill or wooden planks will be installed. Before such holes or trenches are filled, they will be thoroughly inspected for trapped animals. If at any time a trapped or injured SJKF is discovered, work on the Project will stop immediately and the Service will be consulted.
- All construction pipes, culverts, or similar structures with a diameter of 4-inches or greater that are stored at a construction site for one or more overnight periods shall be thoroughly inspected for SJKF and other animals before the pipe is subsequently buried, capped, or otherwise used or moved in any way. In the unlikely event a SJKF is discovered in a structure, work on the Project will stop immediately, and that structure will not be moved until the Service has been consulted.
- An employee education program will be conducted. The program will consist of a brief presentation by a Service-approved biologist. The program will include the following: a description of the SJKF and its habitat needs; a report of SJKF occurrence in the Project area; an explanation of the status of the species and its protection under the Act; and a list of measures being taken to avoid impacts to the species during construction. A fact sheet conveying this information will be prepared for distribution to construction personnel.
- No firearms will be allowed on the Project site.
- No pets will be allowed on the Project site.
- Use of rodenticides in the Project area will not be allowed.
- Upon completion of the Project, all areas subject to temporary ground disturbances, including staging areas and temporary roads, will be re-contoured if necessary, and if appropriate, revegetated with native seed to promote restoration of the area to pre-project conditions.
- Sightings of SJKF will be reported to the California Natural Diversity Database.
- If annual maintenance excavations must continue beyond five years after initial work (original excavation and culvert removal) on the Project has been completed, potential effects to federally protected species will be re-evaluated.
- Additional avoidance and minimization measures required by all applicable permits will be implemented.

## FINDINGS

The attached EA was prepared to evaluate the potential environmental impacts associated with the proposed action and the no action alternative. In accordance with the National Environmental Policy Act of 1969, as amended, Reclamation has found that the proposed action of implementing the Eastside Bypass Conveyance Project, as further described in the attached EA, is not a major Federal action that would significantly affect the human environment. Therefore, an environmental impact statement is not required.

This finding of no significant impact is based on the following, as further described in the attached EA:

- The proposed action will have no effect on the following resources: Indian sacred sites, Indian Trust Assets, aesthetics, hazards, population and housing, public services and utilities, Indian Trust Assets, environmental justice, and recreation.
- El Nido Road is a private, dirt road used primarily for agricultural activities. Reclamation has obtained a flowage easement granting the permanent inundation of El Nido Road where it crosses the Eastside Bypass. Although it may take longer, the local landowners are able to use other private roads to continue daily operations.
- The proposed action will improve hydraulic conditions in the Eastside Bypass channel by reducing water surface elevations as much as a foot. Once the Project is complete, Reclamation will be able to convey additional flows through the Eastside Bypass.
- Water quality concerns may arise with equipment working in the Eastside Bypass channel. Concerns include potential erosion and equipment leaks, resulting in the release of petroleum products, lubricants, or other hazardous materials into the river channel. In order to avoid and minimize potential impacts to water quality in the Eastside Bypass and San Joaquin River, water quality protection measures listed above and required by permits for sections 401, 402, and 404 of the Clean Water Act will be implemented.
- The increased capacity of the low-flow channel and improved flows reduces the chance of raising the water table and causing potential damages to levees.
- Construction emission under the proposed action would be temporary and have been estimated to emit less than the *de minimus* air pollutant thresholds. The environmental commitments described above will further avoid and minimize potential impacts to air quality.
- Considering that the action area does not contain high quality denning habitat due to seasonal flooding, it has marginal to poor suitability as foraging habitat, Project activities will occur during the daytime when SJKF are not active, and that avoidance and minimization measures will be implemented, the proposed action is not likely to adversely affect SJKF. The Service has concurred with this



determination.

- While Central Valley Steelhead and Spring-run Chinook salmon, as well as other fish, including other salmonids, could potentially occur in the Action Area when Restoration Flows are providing for river connectivity, it is currently unknown if that will occur in 2016, depending on hydrology. Activities under the proposed action, including potential maintenance actions, will occur when the Action Area is dry, and will be coordinated, with the input of the SJRRP Restoration Administrator, to occur when the potential for impacts to special status salmonids are avoided and minimized to the extent feasible. Prior to construction activities for the initial excavation activities and potential maintenance activities, Reclamation will coordinate with the Implementing Agencies on the specific actions planned to dewater the Action Area and develop a plan for potential fish rescue activities, as appropriate. This and other Best Management Practices and avoidance and minimization measures, as described above, will be implemented to avoid and minimize potential impacts on special status salmonids. Therefore, the proposed action is not likely to adversely affect spring-run Chinook salmon and Central Valley steelhead. NMFS has concurred with this determination. If annual maintenance excavations must continue beyond five years after initial work (original excavation and culvert removal) on the Project has been completed, potential effects to federally protected species will be re-evaluated.
- Work on the proposed action will occur during the raptor nesting season in the summer when the Eastside Bypass channel is dry. However, with the lack of high quality nesting habitat, implementation of preconstruction surveys for active ground nests and foraging individuals, and implementation of the avoidance measures described above, there will be no take of migratory birds.
- Approximately three acres (five-percent) of wetland vegetation in the Project Area will be impacted during sediment removal. Although the proposed action will not change the extent of waters of the U.S., it may impact the aquatic system and ecosystem functions downstream in the MNWR. Potential impacts include reducing water filtration, sediment storage, flood retention, wildlife habitat, and endangered species habitat. However, the amount of wetland vegetation potentially impacted, and thus potential impacts to aquatic and ecosystem function downstream is negligible. Reclamation will obtain and implement the terms of Clean Water Act, Section 401, 402 and 404 permits, as applicable.
- Overall, the Project will benefit essential fish habitat (EFH) by improving habitat and connectivity. However, Project construction activities, including initial excavation activities and potential future maintenance activities, may adversely affect Pacific Coast Salmon EFH. During construction the Project may cause a temporary introduction of pollutants into the Eastside Bypass and indirectly into the San Joaquin River during flow passage. All of the potential adverse impacts will be temporary in nature, resulting from construction, staging, and access during implementation of the Project. None of the Project effects to EFH are expected to



negatively affect Chinook salmon populations, due to their status in the Action Area, implementation of avoidance and minimization measures listed above regarding hazardous materials and pollutants, and that over the long-term, the Project would benefit Chinook salmon populations. In their January 12, 2016 concurrence letter, NMFS stated that the proposed action includes adequate measures to avoid, minimize, or otherwise offset the adverse effects of the proposed action to EFH. If annual maintenance excavations must continue beyond five years after initial work (original excavation and culvert removal) on the Project has been completed, potential effects to federally protected species and habitat will be re-evaluated.

- The proposed action constitutes an undertaking as outlined in Section 301(7) of the National Historic Preservation Act, initiating Section 106 of the NHPA and its implementing regulations at 36 CFR §800. Because the area is highly disturbed and is unlikely to have a potential for intact archaeological resources, Reclamation concludes that the proposed action would result in a finding of no potential to affect historic properties pursuant to 36 CFR §800.3(a)(1) resulting in no effect to cultural resources.
- Cumulative impacts of the proposed action and other past, present and reasonably foreseeable future actions, including implementation of other SJRRP projects contributing to achieving the Restoration Goal, would have a beneficial effect on hydrology and biologic resources. The proposed action will not considerably contribute to cumulative adverse impacts on any resources. As described in the attached EA, the proposed action is a component of a series of actions along Reach 4B of the SJR and Eastside Bypass. However, the remaining Reach 4B actions are not anticipated to be implemented until at least 2017; therefore, the potential minor and temporary construction-related impacts, as described in the attached EA, will be spaced out from these other actions by at least a year. Additionally, each of those projects, including this proposed action, will implement measures such as those listed above to avoid and minimize potential impacts.