

FINDING OF NO SIGNIFICANT IMPACT

**San Joaquin River Restoration Program
Eastside Bypass Improvements 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 13, 2006, the Settling Parties, including NRDC, Friant Water Users 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 (DWR) and the California Department of Fish and Wildlife (DFW).

Consistent with the Restoration Goal, the SJRRP is proposing to implement the Eastside Bypass Improvements Project (EBIP) to facilitate fish migration and increased Restoration Flow capacity in the Eastside Bypass by 2020. In December 2017, Reclamation, as the lead agency in accordance with the National Environmental Policy Act, as amended (NEPA), and DWR, as the lead agency in accordance with the California Environmental Quality Act, prepared and released for public review the EBIP Draft Environmental Assessment/Initial Study (EA/IS). The EBIP Final EA/IS consists of the December 2017 Draft EA/IS, including Appendices A and B; public comments received (Appendix C), responses to public comments and minor text changes to the EA/IS (Appendix D), Endangered Species Act (ESA) compliance documentation (Appendix E) and National Historic Preservation Act (NHPA) Section 106 compliance documentation (Appendix F).

The EBIP includes several actions being planned and designed for implementation by DWR and Reclamation. DWR proposes to design, permit, and implement the following three project elements to facilitate fish migration and increased Restoration Flow capacity in the Eastside Bypass starting in 2019:

- Reinforce approximately 2 miles of levee along the Eastside Bypass to improve levee stability and reduce seepage (Reach O levee improvements).
- Modify the existing Eastside Bypass Control Structure to improve fish passage.
- Replace the existing culvert at the Dan McNamara Road crossing at the Eastside Bypass to improve fish passage.

Reclamation proposes to design, permit, and implement the following project element to facilitate fish migration in the Eastside Bypass by 2020:

- Improve fish passage by removing two weirs located in the Eastside Bypass that the Service historically operated to provide water to the Merced National Wildlife Refuge (Refuge) for irrigation of managed wetlands, and replace an existing non-operational well with a new well to provide replacement water supply for the Refuge.

The proposed actions, including environmental commitments that will be implemented to avoid and minimize potential impacts to the extent feasible, are further described in the attached EA/IS. On April 5, 2018, Reclamation signed a Finding of No Significant Impact (FONSI) for the Refuge well replacement portion of the EBIP (18-03-SJRRP). To avoid duplication, this document focuses on the proposed actions not addressed in that FONSI.

FINDINGS

The attached EA/IS was prepared to evaluate the potential environmental impacts associated with the proposed action and the no action alternative. In accordance with NEPA, Reclamation has found that the proposed actions, as further described in the attached EA/IS, are not major Federal actions that would significantly affect the human environment. Therefore, an environmental impact statement is not required.

This FONSI is based on the following, as further described in the attached EA/IS:

- The proposed actions will have no effect on the following resources: Indian sacred sites, Indian Trust Assets, agricultural resources, land use, hazards, population and housing, public services and utilities, and environmental justice.
- The proposed action will have a less than significant impact on aesthetics, air quality, and traffic.

- The proposed actions constitute an undertaking as outlined in Section 301(7) of the NHPA, initiating Section 106 of the NHPA and its implementing regulations at 36 CFR §800. Reclamation initiated consultation with the State Historic Preservation Officer (SHPO), notifying the SHPO of Reclamation's finding of no adverse effect, pursuant to 36 CFR §800.4(d)(1). The SHPO responded indicating no objection to this finding, concluding the consultation process for this undertaking (Appendix F).
- As described in the EA/IS, construction activities under the proposed action would be short term and have a small area of disturbance. In addition, the proposed action includes implementing environmental commitments that would avoid and minimize impacts to special status species, including those protected by the Migratory Bird Treaty Act. The proposed action will be consistent with the goals and policies of the Draft San Luis and Merced National Wildlife Refuge Comprehensive Conservation Plan.

In March 2018, the Service concurred with Reclamation's determination that the proposed actions, as described in the March 2018 Biological Assessment (BA), are not likely to adversely affect vernal pool plants and crustaceans, the Central California Distinct Population Segment California tiger salamander (*Ambystoma californiense*) (CTS), blunt-nosed leopard lizard (*Gambelia sila*), giant garter snake (*Thamnophis gigas*), San Joaquin kit fox (*Vulpes macrotis mutica*), and Fresno kangaroo rat (*Dipodomys nitratooides*); and that the proposed action is not likely to adversely affect the primary constituent elements of critical habitat for vernal pool plants and crustaceans. As planning and design efforts have continued, it has been determined that the Reach O Levee improvements and Eastside Bypass Control Structure Rock Ramp elements of the proposed action may adversely affect CTS. Therefore, Reclamation prepared a BA Addendum that proposes additional conservation measures to be implemented by DWR to avoid, minimize and compensate for effects to CTS. Reclamation has completed formal consultation with the Service on potential effects to CTS, and DWR will implement the measures as described in the biological opinion (Appendix E).

The proposed actions are not likely to adversely affect North American green sturgeon (*Acipenser medirostris*), and would not jeopardize the California Central Valley steelhead distinct population segment (*Oncorhynchus mykiss*) or the Central Valley spring-run Chinook salmon (*O. tshawytscha*) being reintroduced by the SJRRP which have been designated as a non-essential experimental population in accordance with Section 10(j) of the ESA. Reclamation completed consultation with NMFS on the effects of the proposed actions on these species in accordance with the ESA and on Essential Fish Habitat in accordance with the Magnuson-Stevens Fishery Conservation and Management Act in June 2018. As part of the proposed actions, Reclamation and DWR will implement the measures as described in the biological opinion as applicable (Appendix E). Therefore, impacts to biological resources will be less than significant.

- Long-term and cumulative impacts from the release of Restoration Flows into the San Joaquin River and the Eastside Bypass were previously analyzed and disclosed in the SJRRP Environmental Impact Statement/Report (PEIS/R). The EBIP EA/IS tiers from that document and focuses on implementation of several fish passage and levee projects that were more broadly analyzed in the PEIS/R. The change in hydrology and wetland function from releasing Restoration Flows is not analyzed as an impact of the proposed action in the EBIP EA/IS, as the change is assumed to be part of the no action alternative condition, which includes implementation of the selected alternative as described in the 2012 SJRRP PEIS/R Record of Decision, including release of up to 4,500 cubic feet per second of Restoration Flows in the Restoration Area. Reclamation recognizes that this no action alternative condition has affected the Refuge and will continue to work with the Refuge on avoiding and/or minimizing potential changes to Refuge operations and wetlands.

Reclamation and DWR are coordinating with the U.S. Army Corps of Engineers and Regional Water Quality Control Board on completion of permits in accordance with Sections 404 and 401 of the Clean Water Act, as applicable for the proposed actions. Construction activities will not commence until issuance of these permits. Therefore, impacts of implementing the proposed actions on hydrology and wetlands will be less than significant.