

RECLAMATION

Managing Water in the West

Joint Biological Assessment

**Bureau of Reclamation, Bureau of Indian Affairs, and
Non-Federal Water Management and Maintenance
Activities on the Middle Rio Grande, New Mexico**

**Middle Rio Grande Project, New Mexico
San Juan-Chama Project, New Mexico
Upper Colorado Region**



Mission Statements

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The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

The Bureau of Indian Affairs' mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives.



Joint Biological Assessment

Bureau of Reclamation, Bureau of Indian Affairs, and Non-Federal Water Management and Maintenance Activities on the Middle Rio Grande, New Mexico

Part V – Agency Determination of Effects and Procedural Considerations

**Middle Rio Grande Project, New Mexico
San Juan-Chama Project, New Mexico
Upper Colorado Region**

Submitted to the U.S. Fish and Wildlife Service

Rio Grande Silvery Minnow

Southwestern Willow Flycatcher

Yellow-billed Cuckoo

New Mexico Meadow Jumping Mouse

Pecos Sunflower

Interior Least Tern



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1. Agency Determination of Effects to ESA-Listed Species

As required by section 7 of the ESA and based on the information and analysis of effects presented in this programmatic BA, the following determinations are made for the Rio Grande silvery minnow, Southwestern willow flycatcher, western DPS of the yellow-billed cuckoo, New Mexico meadow jumping mouse, Pecos sunflower, and interior least tern. These determinations do not reflect consideration of the Offsetting and Conservation Measures described in Part IV. All actions associated with SJC Project water releases are beneficial to the listed species, as these releases provide water that would otherwise not be in the Rio Grande system. Therefore, informal consultation is requested from the Service for SJC actions described in this BA.

1.1 Rio Grande Silvery Minnow

The composite proposed actions consisting of Reclamation and non-federal water management and river maintenance and restoration actions in the MRG as described in this programmatic BA **may affect, and are likely to adversely affect the silvery minnow**. The composite proposed actions are also **likely to adversely affect designated critical habitat** for the silvery minnow. The following provides the final determinations for each proposed action on the silvery minnow.

For the water operations actions (Part II), direct effects to the silvery minnow include increased drying in particular subreaches. Indirect effects include modification of habitat by water operations that impact habitat extent and diversity. Critical habitat is affected by the increase in the number of low flow days and the decrease in wetted area, which has impacts on habitat quality and quantity as well as water quality. Other effects include a decrease in the magnitude and duration of spring high flows that could affect annual spawning and recruitment of silvery minnow.

For river and infrastructure maintenance and restoration activities (Part III), direct effects to silvery minnow are caused by disturbance due to activities that occur within occupied portions of the river, LFCC, other conveyance structures, and MRGCD facilities. Maintenance activities will be designed with a priority to avoid direct impacts to silvery minnow and critical habitat and BMPs will continue to be used to minimize negative effects to silvery minnow. Analysis in Part III of this BA indicates that the potential acreage of impacted silvery minnow habitat would likely be 1,586 acres over a 10-year period. Indirect effects may occur after maintenance activities are completed due to geomorphic changes in the river that occur as a result of the maintenance activities. Indirect effects are expected to be localized from implementation of individual river maintenance projects and dependent on the project design, methods used, and location of the project. The long-term effects on the habitat within the river are expected as a whole to be positive for the silvery minnow because they are designed to minimize future river

maintenance needs and direct impacts to the river, as well as to strive for a net beneficial impact for silvery minnow habitat features by creating new floodplain and in-channel habitat features where possible.

- Water Operations Actions – Reclamation’s determinations of effect on the silvery minnow are as follows:
 - **May affect, but not likely to adversely affect:**
 - ◇ Heron Releases – Release of non-native SJC Project water from Heron Reservoir (**Reclamation**)
 - ◇ El Vado Reservoir Operations – Manage (store, release, administer) non-native SJC Project water, including MRGCD SJC storage and release in Abiquiu (**Reclamation, MRGCD**)
 - ◇ Relinquishment – Allocation of relinquishment credit for storage and release of relinquished water (primarily storage is in El Vado) (**State**)
 - ◇ El Vado Reservoir Operations – Release native water from storage for MRG irrigation uses, or at the request of BIA, MRGCD, or the NMISC; release allocated relinquished credit water (**Reclamation, BIA, MRGCD**)
 - ◇ Operate Drains and Wasteways – Collect and return water to river (**MRGCD, Reclamation**)
 - **May affect and likely to adversely affect:**
 - ◇ El Vado Reservoir Operations – Store native water at the request of MRGCD or reserve water for P&P lands at request of BIA; store allocated relinquished water (**Reclamation, BIA, MRGCD**)
 - ◇ Operate Diversions – Divert water, for delivery to and consumption by agricultural users, at Cochiti, Angostura, Isleta, San Acacia dams (**MRGCD**)
 - ◇ Administration of surface water and groundwater supplies (**State**)
 - ◇ Administration of domestic, municipal, livestock and temporary uses (**State**)
- River Maintenance and Restoration Actions – Reclamation’s determinations of effect on the silvery minnow are as follows:
 - **May affect, but not likely to adversely affect:**
 - ◇ Maintenance of River Facilities – River facilities, dams, and levee maintenance (**MRGCD**)
 - **May affect and likely to adversely affect:**
 - ◇ River Maintenance – Up to 8 projects per year (average of 4 per year); includes State cooperative agreement for MRG Project Area (**Reclamation, State**)

- ◇ River Maintenance – Support activities; includes maintenance of access roads, storage sites, stockpile sites, borrow areas, and quarries. Also covers pumping water for dust abatement and data collection (**Reclamation, State**)
- ◇ River Maintenance – Maintenance of Delta Channel, includes State cooperative agreement for MRG Project Area (**Reclamation, State**)
- ◇ Drain Maintenance – Drain and LFCC maintenance; includes State cooperative agreement for MRG Project Area (**Reclamation, State, MRGCD**)
- ◇ Habitat Restoration – Shoreline and overbank habitat improvements to enhance incubation and nursery habitats of silvery minnow (**Reclamation, State, MRGCD**)

The Offsetting and Conservation Measures presented in Part IV are intended to minimize the adverse effects of these actions and work to improve the status of the silvery minnow. The use of Adaptive Management, in particular, throughout the implementation of Part IV Conservation Measures will help to identify specific management activities, monitoring, and research that will be used to evaluate and improve management decisions and allow for flexible water management while also moving toward the recovery of the species.

1.2 Southwestern Willow Flycatcher

The composite proposed actions consisting of Reclamation and non-federal water management and maintenance actions described in this programmatic BA **may affect, and are likely to adversely affect** the flycatcher. The composite proposed actions are also **likely to adversely affect designated critical habitat** for the flycatcher. The following provides the final determinations of effect for each proposed action on the flycatcher.

For water operations, effects to flycatchers include the decrease in available water for established riparian vegetation and a decrease in the amount of overbank flooding, which provides seed dispersal to establish native riparian vegetation and also may create disturbance to senescing vegetation.

For river and infrastructure maintenance and restoration, direct effects to the flycatcher are caused by disturbance from maintenance and restoration activities that occur within suitable habitat or in close proximity to historical flycatcher territories. Direct effects caused by construction activities are likely to adversely affect flycatchers or flycatcher critical habitat. BMPs have been and will continue to be used to minimize negative effects to flycatchers; maintenance activities will be designed with a priority to avoid direct impacts to flycatchers and suitable habitat. Analysis from Part III of this BA indicates that the likely potential acreage of impacted flycatcher habitat would be minimal in the next 10 years.

Indirect effects may occur due to maintenance and restoration activities that occur away from historical flycatcher territories or suitable habitat and/or while flycatchers have not yet arrived to their breeding grounds. These also include effects that occur due to geomorphic changes in the river and disturbance to vegetation as a result of the maintenance or restoration activities.

Indirect effects are expected to be localized for the implementation of individual river maintenance and restoration projects and dependent on the methods used. The long-term effect on flycatcher habitat of implementing river maintenance and restoration strategies within the river corridor is expected, as a whole, to be beneficial for the flycatcher, as these strategies are designed to minimize future river maintenance needs and direct impacts to the river as well as allow natural river processes, when possible, that benefit flycatcher habitat and include the creation of flycatcher habitat, when appropriate. In general, river maintenance and restoration methods that reduce channel incision, promote flood plain connectivity, and provide a greater potential for overbank flooding are more beneficial for flycatchers than methods that would increase the flood-flow capacity within the channel and lower the water table. Similar to direct effects, indirect effects from maintenance and restoration activities are expected to be generally beneficial, but also may adversely affect flycatchers or flycatcher critical habitat dependent on the methods used.

- Water Operations Actions – Reclamation’s determinations of effect on the flycatcher are as follows:
 - **May affect, but not likely to adversely affect:**
 - ◇ Heron Releases – Release of non-native SJC Project water from Heron Reservoir **(Reclamation)**
 - ◇ El Vado Reservoir Operations – Manage (store, release, administer) non-native SJC Project water, including MRGCD SJC storage and release in Abiquiu **(Reclamation, MRGCD)**
 - ◇ Relinquishment – Allocation of relinquishment credit for storage and release of relinquished water (primarily storage is in El Vado) **(State)**
 - ◇ Administration of surface water and groundwater supplies **(State)**
 - ◇ Administration of domestic, municipal, livestock and temporary uses **(State)**
 - ◇ El Vado Reservoir Operations – Store native water at the request of MRGCD or reserve water for P&P lands at request of BIA; store allocated relinquished water **(Reclamation, BIA, MRGCD)**
 - ◇ El Vado Reservoir Operations – Release native water from storage for MRG irrigation uses, or at the request of BIA, MRGCD, or the NMISC; release allocated relinquished credit water **(Reclamation, BIA, MRGCD)**
 - ◇ Operate Drains and Wasteways – Collect and return water to river **(MRGCD, Reclamation)**

- **May affect and likely to adversely affect:**
 - ◇ Operate Diversions – Divert water, for delivery to and consumption by agricultural users, at Cochiti, Angostura, Isleta, San Acacia dams (**MRGCD**)
- River Maintenance and Restoration Actions – Reclamation’s determinations of effect on the flycatcher are as follows:
 - **May affect, but not likely to adversely affect:**
 - ◇ Maintenance of River Facilities – River facilities, dams, and levee maintenance (**MRGCD**)
 - **May affect and likely to adversely affect:**
 - ◇ River Maintenance – Up to 8 projects per year (average of 4 per year); includes State cooperative agreement for MRG Project Area (**Reclamation, State**)
 - ◇ River Maintenance – Support activities; includes maintenance of access roads, storage sites, stockpile sites, borrow areas, and quarries. Also covers pumping water for dust abatement and data collection (**Reclamation, State**)
 - ◇ River Maintenance – Maintenance of Delta Channel, includes State cooperative agreement for MRG Project Area (**Reclamation, State**)
 - ◇ Drain Maintenance – Drain and LFCC maintenance; includes State cooperative agreement for MRG Project Area (**Reclamation, State, MRGCD**)
 - ◇ Habitat Restoration – Shoreline and overbank habitat improvements to silvery minnow habitat and habitat restoration for flycatcher and cuckoo may have short-term adverse effects on flycatchers (**Reclamation, State, MRGCD**)

The use of Adaptive Management, in particular, throughout the implementation of Part IV Conservation Measures will help to identify specific management activities, monitoring, and research that will be used to evaluate and improve management decisions and allow for flexible water management while also moving toward the recovery of the species.

1.3 Western Yellow-Billed Cuckoo

The composite proposed actions consisting of Reclamation and non-federal water management and maintenance actions of the MRG Project **may affect, and are likely to adversely affect** the cuckoo. The composite proposed actions are also **likely to adversely affect proposed critical habitat** for the cuckoo. The following provides the final determinations for each proposed action on the cuckoo as described in the BA.

Because there is no habitat suitability model developed specifically for the cuckoo and there are many similarities between cuckoo and flycatcher habitat, the direct and indirect effects from the

proposed actions are presumed to be the same as described above for the flycatcher in Section 1.2.

- Water Operations Actions – Reclamation’s determinations of effect on the cuckoo are as follows:
 - **May affect, but not likely to adversely affect:**
 - ◇ Heron Releases – Release of non-native SJC Project water from Heron Reservoir **(Reclamation)**
 - ◇ El Vado Reservoir Operations – Manage (store, release, administer) non-native SJC Project water, including MRGCD SJC storage and release in Abiquiu **(Reclamation, MRGCD)**
 - ◇ El Vado Reservoir Operations – Store native water at the request of MRGCD or reserve water for P&P lands at request of BIA; store allocated relinquished water **(Reclamation, BIA, MRGCD)**
 - ◇ El Vado Reservoir Operations – Release native water from storage for Middle Rio Grande irrigation uses, or at the request of BIA, MRGCD, or the NMISC; release allocated relinquished credit water **(Reclamation, BIA, MRGCD)**
 - ◇ Relinquishment – Allocation of relinquishment credit for storage and release of relinquished water (primarily storage is in El Vado) **(State)**
 - ◇ Administration of Surface water and Groundwater Supplies **(State)**
 - ◇ Administration of Domestic, Municipal, Livestock and Temporary Uses **(State)**
 - ◇ Operate Drains and Wasteways – Collect and return water to river **(MRGCD, Reclamation)**
 - **May affect and likely to adversely affect:**
 - ◇ Operate Diversions – Divert water, for delivery to and consumption by agricultural users, at Cochiti, Angostura, Isleta, San Acacia dams **(MRGCD)**
- River Maintenance and Restoration Actions – Reclamation’s determinations of effect on the cuckoo are as follows:
 - **May affect, but not likely to adversely affect:**
 - ◇ Maintenance of River Facilities – River facilities, dams, and levee maintenance **(MRGCD)**
 - **May affect and likely to adversely affect:**
 - ◇ River Maintenance – Up to 8 projects per year (average of 4 per year); includes State cooperative agreement for MRG Project Area **(Reclamation, State)**

- ◇ River Maintenance – Support activities; includes maintenance of access roads, storage sites, stockpile sites, borrow areas, and quarries. Also covers pumping water for dust abatement and data collection (**Reclamation, State**)
- ◇ River Maintenance – Maintenance of Delta Channel, includes State cooperative agreement for MRG Project Area (**Reclamation, State**)
- ◇ Drain Maintenance – Drain and LFCC maintenance; includes State cooperative agreement for MRG Project Area (**Reclamation, State, MRGCD**)
- ◇ Habitat Restoration – Shoreline and overbank habitat improvements to silvery minnow habitat and habitat restoration for flycatcher and cuckoo may have short-term adverse effects on cuckoos (**Reclamation, State, MRGCD**)

1.4 New Mexico Meadow Jumping Mouse

The composite Proposed Actions consisting of Reclamation and non-federal water management and maintenance actions of the MRG Project **may affect, but are not likely to adversely affect** the jumping mouse. The composite proposed actions are also **not likely to adversely affect proposed critical habitat** for the jumping mouse. The following provides the final determinations for each proposed action on the jumping mouse as described in the BA.

For water operations, the various effects of the proposed actions either will have no effect or are not likely to adversely affect jumping mouse or proposed jumping mouse critical habitat due to beneficial effects on the species. For example, releases of water from storage and diversions into irrigation drains and canals are beneficial by delivering water to the BDA where the existing population occurs, and by typically maintaining reliable and consistent water elevations that support existing habitat areas.

For river maintenance and restoration, direct effects could be caused by activities that occur within existing occupied jumping mouse habitat; however, the only known current population of the jumping mouse occurs in the BDA along the Riverside Drain, which is not part of the proposed action. BMPs will also help to minimize the risk of any adverse effects to the jumping mouse elsewhere. Maintenance actions are not likely to occur in proposed critical habitat at Ohkay Owingeh or Isleta Pueblos; therefore, construction activities will have no direct effect to the jumping mouse, and are not likely have direct adverse effects to proposed critical habitat.

Indirect effects could be caused by maintenance and restoration activities that occur away from existing occupied jumping mouse habitat, such as effects from geomorphic changes in the river as a result of the maintenance or restoration activities. Indirect effects are expected to be local to a given project site and have the potential for positive and negative impacts to jumping mouse depending on the methods used. In general, river maintenance methods that reduce channel incision, promote flood plain connectivity, and provide a greater potential for overbank flooding

are more beneficial for jumping mouse than river maintenance methods that would increase the flood-flow capacity within the channel and lower the water table. However, given the only known population of jumping mice is in the BDA along the Riverside Drain, which is not part of the proposed action, maintenance and restoration activities will have no direct effects on jumping mouse. Similar to direct effects, the proposed actions are not likely to result in any indirect adverse effects to proposed critical habitat.

- Water Operations Actions – Reclamation’s determinations of effect on the jumping mouse are as follows:
 - **No effect:**
 - ◇ Heron Releases – Release of non-native SJC Project water from Heron Reservoir (**Reclamation**)
 - ◇ El Vado Reservoir Operations – Manage (store, release, administer) non-native SJC Project water, including MRGCD SJC storage and release in Abiquiu (**Reclamation, MRGCD**)
 - ◇ El Vado Reservoir Operations – Store native water at the request of MRGCD or reserve water for P&P lands at request of BIA; store allocated relinquished water (**Reclamation, BIA, MRGCD**)
 - **May affect, but not likely to adversely affect:**
 - ◇ El Vado Reservoir Operations – Release native water from storage for Middle Rio Grande irrigation uses, or at the request of BIA, MRGCD, or the NMISC; release allocated relinquished credit water (**Reclamation, BIA, MRGCD**)
 - ◇ Relinquishment – Allocation of relinquishment credit for storage and release of relinquished water (primarily storage is in El Vado) (**State**)
 - ◇ Administration of surface water and groundwater supplies (**State**)
 - ◇ Administration of domestic, municipal, livestock and temporary uses (**State**)
 - ◇ Operate Diversions – Divert water, for delivery to and consumption by agricultural users, at Cochiti, Angostura, Isleta, San Acacia dams (**MRGCD**)
 - ◇ Operate Drains and Wasteways – Collect and return water to river (**MRGCD, Reclamation**)
- River Maintenance and Restoration Actions – Reclamation’s determinations of effect on the jumping mouse are as follows:
 - **No effect:**
 - ◇ River Maintenance – Up to 8 projects per year (average of 4 per year); includes State cooperative agreement for MRG Project Area (**Reclamation, State**)

- ◇ River Maintenance – Support activities; includes maintenance of access roads, storage sites, stockpile sites, borrow areas, and quarries. Also covers pumping water for dust abatement and data collection (**Reclamation, State**)
- ◇ Drain Maintenance – Drain and LFCC maintenance; includes State cooperative agreement for MRG Project Area (**Reclamation, State, MRGCD**)
- ◇ River Maintenance – Maintenance of Delta Channel; includes State cooperative agreement for MRG Project Area (**Reclamation, State**)
- ◇ Maintenance of River Facilities – River facilities, dams, and levee maintenance (**MRGCD**)

- ◇ Habitat Restoration – Habitat improvements would not be done in habitat occupied by the jumping mouse (**Reclamation, State, MRGCD**)

1.5 Pecos Sunflower

The composite proposed actions consisting of Reclamation and non-federal water management and maintenance actions of the MRG Project are beneficial to the Pecos sunflower on La Joya WMA due to delivery of water through the irrigation system on which they depend. The newly established Rhodes population of Pecos sunflower is not likely to be adversely affected due to the insignificant magnitude of the changes to overbank flows high enough to inundate this population. Maintenance activities will be designed with a priority to avoid direct impacts to Pecos sunflower. Impacts to Pecos sunflower are possible due to maintenance actions, specifically Project drain maintenance on the La Joya Drain, which occurs within occupied habitat or in close proximity to Pecos sunflower populations, or changes in water delivery to those areas. Project areas near occupied Pecos sunflower habitats will be surveyed prior to any work. If Pecos sunflower are present within the needed maintenance area, Reclamation will work with the Service to develop a plan to avoid impact to the sunflower populations. With these measures in place, the proposed actions **may affect, but are not likely to adversely affect** Pecos sunflower and there is no designated critical habitat in the action area. .

1.6 Interior Least Tern

The composite proposed actions consisting of Reclamation and non-federal water management and maintenance actions of the MRG Project will have **no effect** on the interior least tern.

2. Procedural Considerations Related to this ESA Consultation

2.1 Streamlined ESA Compliance for Future Consultations

2.1.1 Water Operations Actions Covered Under the Programmatic BA/BO

This BA is programmatic in nature, and for water operations the proposed actions are identified, described, and covered fully in the BA, such that Incidental Take Statement (ITS) coverage is requested and no further consultation would be required on these actions while the BO is in effect. The recent final rulemaking in May 2015 by the Service and the National Marine Fisheries Service amended the ITS provisions of the section 7 consultation regulations, in part to refine the basis for developing ITSs related to programmatic actions. The final rule clarified ITS development for “framework” programmatic consultations, where a framework program is consulted on that only establishes the structure for future development of action(s), but those actions are not yet authorized (i.e., the framework itself does not result in incidental take of listed species). This does not apply to the proposed actions described in this BA. In addition, the final rule clarified that reasonable certainty of take occurring is the applicable standard for the Service to issue an ITS for a programmatic consultation. If incidental take is reasonably certain to occur and the proposed action is compliant with the requirements of section 7(a)(2), then an action-specific ITS is provided for actions under the programmatic consultation. Given the information presented in this programmatic BA for water operations actions, the proposed actions are defined and analyzed, as well as reasonably certain to occur; therefore, this standard has been met for requesting an ITS from the Service on this programmatic consultation.

2.1.2 River Maintenance and Restoration Actions Covered Under the Programmatic BA/BO

Reclamation and the BA Partners propose three categories of consultation, considering the variation we expect across projects:

- *Category 1: Covered Action.* Individual action is already covered fully in the programmatic BA/BO and has ITS coverage; therefore, no further consultation is required.
- *Category 2: Covered Action with Incidental Take Accounting Required.* Individual action is one of the types of actions described in BA/BO and follows all applicable BMPs (e.g., a typical river maintenance or habitat restoration project); however, site-specific acreage amounts for the individual project were not identified in the BA/BO. These site-specific acreage amounts would fall within the overall ITS for river maintenance and restoration in the BO, and some ITS accounting is needed, which is proposed to be

accomplished through a letter to the Service informing the acreage and associated incidental take (IT) amount that would count toward the total ITS amount already authorized.

- *Category 3: Covered Action Requiring Tiered Consultation.* Individual action is referenced or consistent with actions in the BA/BO, but there was insufficient detail at the time of the BO to fully consult and issue an ITS for that action (e.g., San Acacia fish passage pilot project). This category of action would also include actions outside the typical scale for river maintenance and habitat restoration projects (e.g., large-scale channel realignment), or where a unique feature is included that was not covered fully in the BA/BO. A tiered consultation would be required that incorporates by reference the appropriate sections from the BA/BO, and which requires a more typical, individual section 7 consultation process and independent ITS.

Reclamation plans to work with the Service and other involved agencies to have a streamlined consultation process that tiers from the programmatic BO. Streamlined consultation reduces the likelihood of conflicts between proposed actions, listed and proposed species, and their critical habitat, and is an efficient and effective approach for conducting section 7 consultations for a category of activities that occur frequently, and whose actions are in compliance with a larger, programmatic BO.

The proposed actions for river maintenance and restoration are described in Part III of this BA, including specific methods and techniques routinely utilized for river maintenance and habitat restoration projects within the MRG and the effects of these actions. Reclamation and the BA Partners are proposing to utilize a streamlined consultation approach for future river maintenance and habitat restoration projects within the MRG, with the following benefits expected:

- Further conservation of listed and proposed species and their habitats
- Enhanced interagency cooperation and improved working relationships
- Substantially shortened consultation timelines
- Increased consistency in the application of compliance and recovery actions through development and use of guidance criteria
- Increased use of informal consultation (vs. formal)
- Reduced vulnerability to legal challenges

Early planning is critical to the success of the streamlined process and includes interagency participation in initial stages of planning, project/action design meetings, preliminary effects determinations, and preparation of preliminary BA documents. Reclamation and Service

personnel are expected to participate to the extent possible in the early planning process to help address concerns with listed and proposed species, and designated and proposed critical habitat.

A programmatic consultation provides opportunity for streamlining future consultations through a tiered consultation process on individual actions that fall under the scope of the larger programmatic consultation (USDA Forest Service et al. 1997). Reclamation plans to work with the Service through this consultation process to identify the appropriate procedures for those tiered consultations.

2.1.3 Compliance for Other Water-Related Actions through Separate Consultations

In the draft RIP Program Document, Section VI.F, a process was identified for incorporating future actions that are not covered in this programmatic consultation. These would be future actions requiring ESA section 7 consultation with the Service, where the RIP could potentially serve as a mechanism for Conservation Measures that help facilitate ESA compliance for that action. All of these future actions that are not covered under this BA would go through the Service for a determination on the appropriate ESA compliance. Section VI.F of the draft RIP Program Document states:

“Additional actions within the Program action area [not covered in this BO] may use the RIP when undergoing subsequent separate ESA section 7 consultations as content for Conservation Measures to minimize the effects of those actions or to provide RPAs or RPMs. For these additional actions, any RPAs and RPMs must begin implementation before the impact from the action occurs. If the Service finds during a separate section 7 consultation that RIP activities are sufficient to facilitate ESA compliance for an additional water management action, the biological opinion for that additional action will identify those Conservation Measures, if any, and identify the RIP activities to serve as the offsetting or minimization measures for any RPAs and RPMs. If the Service finds that RIP activities are not able to offset impacts of the additional action and/or are not able to provide content for any RPAs and RPMs related to the additional water management action, the biological opinion for this additional action will be written to identify which activity(-ies) would need to be incorporated into the LTP, the RIP Action Plan, and/or the Annual Work Plan and implemented to provide coverage for the additional action. If this occurs, the Service (with the consent of the Federal action agency(-ies) and any Applicants(s)) will notify the RIP’s Executive Committee in writing, identify the additional beneficial activity needed, and provide the EC an opportunity to review the needed activity and incorporate the activity into the LTP, the RIP Action Plan and/or the Annual Work Plan. If the EC elects not to incorporate the new activity, the Service will work with the Federal agency(-ies) and any Applicant(s) involved for that additional water management action to ensure compliance with ESA section 7 through means other than the RIP. Coordination with the EC will not alter the timeframe for consultation.”

2.2 15-Year Timeframe for the BA/BO

Based on discussions with the Service in early 2015, a 15-year timeframe for the programmatic BO is proposed here in this programmatic BA. This approach for the timeframe of the BO was generated through joint discussions among Reclamation, the MRGCD, the State, and the Service

at meetings on January 26 and April 6, 2015. At those meetings, options were discussed as to the duration of ESA compliance coverage that might be pursued under this programmatic consultation.

The goal for requesting a 15-year duration programmatic BO, with the use of Adaptive Management to adjust Conservation Measures over the 15-year duration of the BO, is to ensure available resources are used for the most effective benefit to listed species and critical habitat. This approach reflects shared goals across the agencies, including (1) working collaboratively through a defined Adaptive Management approach to address scientific uncertainty, (2) achieving longer-term regulatory predictability in the basin, (3) obtaining a longer-term compliance timeframe to maximize resource expenditures for species and habitat measures rather than diverting those resources to the reinitiation process for BA and BO development, and (4) developing a longer-term path to contribute to recovery for the species rather than engaging in shorter-term crisis management.

It is proposed that the details of this approach be defined collaboratively with the Service as the consultation proceeds, and reflected in the new programmatic BO that is developed.

2.3 Extension of BO Beyond the Initial 15-Year Term

Reclamation and the BA Partners propose that an option be explored for extending BO coverage beyond the 15-year timeframe, given that certain conditions are identified to facilitate this process. Reclamation and the BA Partners understand that we will be working through the procedural details of an extension option as part of the section 7 consultation process with the Service. A proposed approach is presented in this section for consideration.

At the conclusion of the 15-year initial term for the BO, extension of BO coverage could be pursued through a continued Adaptive Management process at established intervals. For example, coverage could continue in 5-year or greater increments pending successful review by the Service, including a determination that the established conditions for extension have been met. Such conditions could include (1) a defined Adaptive Management process under the BO has been followed during this initial 15 years of the BO, (2) lessons learned through the Adaptive Management process are incorporated into adjustments at the 5-year Adaptive Management review steps, (3) no reinitiation triggers have been activated pursuant to 50 CFR §402.16, and (4) the Service concurs that implemented actions are in substantial compliance with established milestones, taking into account contingencies, natural conditions, and alternative actions implemented consistent with BO parameters during that timeframe. The resource commitments under the BO may be reassessed as part of the extension process, and extension of coverage under the BO would be documented in writing by the Service for each extension interval.

2.4 Role of the Recovery Implementation Program

This BA identifies the RIP as a Conservation Measure. The RIP Program Documents are being revised and will be presented for endorsement by the Executive Committee of the Collaborative Program. It is anticipated that the RIP will be identified as an ESA compliance mechanism in the upcoming BO. The BA partners recommend the BO identify that (1) the RIP will be formally established by the signing of a Cooperative Agreement within one year following issuance of the BO, and (2) the steps needed to fully transition to the RIP (as specified in a RIP Implementation Schedule) will be implemented within three years following issuance of the BO.