

Appendix 1: Comment Letters and Responses to Comments

Proposed Rule and Draft Environmental Assessment for Nonessential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam

Statement by Burt Bundy, President of Mill Creek Conservancy on February 5, 2013

1. The Endangered Species Act specifically prohibits collections that would jeopardize existing populations of Spring-run. Due to the current high risk of extinction, Mill Creek spring-run stock should be removed from consideration in the All Donor Stock Sources Alternative in establishing the San Joaquin experimental population.

Response
#1

2. The Draft Environmental Assessment needs to reference population levels and rates of recovery warranting reclassifying wild spring-run populations as 'stable with a low risk of extinction', before any Mill Creek fish are considered for collection.

Response
#2

3. I question the determination that San Joaquin stocks and Sacramento stocks would not mix. Conditions in the Delta are such that returning fish are confused by the many pumps, diversions and flows that affect their historic migrations. Substantial straying has occurred with several other species.

Response
#3

4. Once habitat conditions in the San Joaquin can sustain populations of spring run, reassess whether wild stream-type salmon are appropriate as a genetic source.

Response
#4

Our recommendation: Proceed with San Joaquin River Restoration projects proposed to improve habitat, flows and water management. Assess salmon population response using introduced surplus Central Valley hatchery fall-run and spring-run Chinook. Monitor the volitional re-colonization of wild spring-run Chinook before any collection of wild stock from a Sacramento River tributary is considered. If wild spring run populations increase and stabilize, and the habitat in the San Joaquin can support Mill Creek genetic stock, local shareholders will participate in the Section 10(a)(1)(A) permitting process, including stock selection and collection methods.

Response
#5

R²

C G Spies
PO Box 171
Pequabuck CT 06781
25 Jan 13

RECEIVED

JAN 25 2013

Nat'l Marine Fisheries Svc.
Sacramento, CA

Protected Resources Div
Southwest Region
National Marine Fisheries Service
Ste 5-100
650 Capitol Mall
Sacramento CA 95814

Please send me a copy of the list of references cited in the proposed rule "Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon Below Friant Dam in the San Joaquin River, CA", published in the 16 Jan 13 Federal Register.

Why isn't this posted at regulations.gov?



Response #6

Thank you.

C G Spies

R²

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FEB 22 2013

Nat'l Marine Fisheries Svs.
Sacramento, CA

US Dept of Commerce
NOAA Fisheries, NMFS
Sacramento Office
850 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Subject: San Joaquin Restoration Program

Gentlemen:

The following negatives, both inherent and external, associated with the re-watering for salmon fishery restoration in the upper reaches of the San Joaquin are quite daunting:

- o boaters even cannot find the main channel at the Mendota Pool
- o flood channels are not known for friendly salmon transportation corridors
 - They are not geologically or morphologically vital
 - They have a lack of shading
 - There is a lack of woody debris etc.
- there is a limited water supply; increasing as snowpack diminishes
- the diminished oxygen levels from the lake depth are not replenished downstream
- three hatcheries involved mean increased contagion vectors
- there is a total lack of spawning habitat; gravel dumping is anthropomorphic thinking
- dams , of course limit passage and oxygen no plans for oxygenation is projected or for ladders or other artificial passage
- poaching is already a concern in the area.often using nets or multiple lines
- non- human predators from cats to catfish, or stripers, is considered; they like the warmed water
- Rural and municipal discharges are impacts to appropriate water quality.

Response #7

Considering the foregoing, it can be seen why the project operation is loathe to publish results and problems but on a 5 year cycle. Of course, this is indicative of mindset where management uses various magic bullets du jour as an adaptive management style. With the various negatives and constraints placed upon the project, it could be dismissed as being a biodoggle were it not for downstream impacts. Exotic invertebrates and weeds will be readily transported downstream. Minimum mitigation for this can occur by treating the refuges and down river areas like lakes and reservoirs treat boats now and by partnering with the California Invasive Plant Council, Boating and Waterways, Department of Water Resources and local water districts on in identification and mapping program

Sincerely,



Dennis Fox
918 Blossom St.
Bakersfield, CA 93306



March 4, 2013

BY E-MAIL: SJRSRING.SALMON@NOAA.GOV

Protected Resources Division, Southwest Region
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

**Re: Comments of the San Luis & Delta-Mendota Water Authority
Regarding Designation of a Nonessential Experimental Population of
Central Valley Spring-Run Chinook Salmon Below Friant Dam in the
San Joaquin River (NOAA-NMFS-2012-0221) (published at 78 Fed.
Reg. 3381, January 16, 2013)**

Dear National Marine Fisheries Service:

We submit this letter as the comments of our clients, the San Luis & Delta-Mendota Water Authority and the Westlands Water District (together, the "Authority"). As the National Marine Fisheries Service ("NMFS") is aware, the members of the San Luis & Delta-Mendota Water Authority receive their water supply primarily through water conveyed through the Delta and pumped at the Jones Pumping Plant and the Banks Pumping Plant located near Tracy, California. Westlands Water District is a member of the San Luis & Delta-Mendota Water Authority, and serves an area encompassing some six hundred thousand acres of fertile agricultural lands in the western San Joaquin Valley.

Our clients appreciate this opportunity to comment on the proposed rule relating to designation of a nonessential experimental population of Central Valley Spring-Run Chinook salmon below Friant Dam in the San Joaquin River (NOAA-NMFS-2012-0221) ("Proposed Rule"). In this letter the Authority also provides comments on the Draft Environmental Assessment for Nonessential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam ("Draft EA"), and on the NMFS Technical Memorandum regarding Considerations for Accounting of Incidental Take and Triggers at the Delta Federal and State Export Facilities of Reintroduced San Joaquin River Spring-Run Chinook Salmon (Jan. 28, 2013) ("Technical Memorandum").

The Proposed Rule is one step in the process of the reintroduction effort for spring-run Chinook salmon ("spring-run Chinook") on the San Joaquin River under the San Joaquin River Restoration Program as mandated by the stipulated settlement in *NRDC v. Rodgers* ("Stipulated

ATTORNEYS AT LAW

400 CAPITOL MALL, 27TH FLOOR SACRAMENTO, CALIFORNIA 95814 TELEPHONE (916) 321-4500 FAX (916) 321-4555
1675 CHESTER AVENUE, SUITE 320 BAKERSFIELD, CALIFORNIA 93301 TELEPHONE (661) 864-3800 FAX (661) 864-3810
1432 HIGUERA STREET SAN LUIS OBISPO, CALIFORNIA 93401 TELEPHONE (805) 786-4302 FAX (805) 786-4319

www.kmtg.com

Settlement”),¹ and approved by Congress through the San Joaquin River Restoration Settlement Act, P.L. 111-11, 123 Stat. 1349 (“SJRRSA”). The SJRRSA requires the Secretary of Commerce to issue a rule under section 4(d) of the Endangered Species Act (“ESA”) and mandates that the rule “provide that the reintroduction will not impose more than *de minimus*: water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction.” (SJRRSA, § 10011(c)(2), (3).) Under the SJRRSA, “third party” means “persons or entities diverting or receiving water pursuant to applicable State and Federal laws and shall include Central Valley Project contractors outside of the Friant Division of the Central Valley Project and the State Water Project.” (SJRRSA, § 10011(c)(1).) The Authority’s member agencies receive water pursuant to applicable State and Federal laws and are Central Valley Project (“CVP”) contractors outside of the Friant Division of the CVP. Therefore, the Authority’s member agencies are “third parties” for the purposes of the SJRRSA and the Authority is submitting these comments to ensure that the SJRRSA’s “*de minimus*” mandate is implemented through the 4(d) take provisions. The SJRRSA further and more broadly provides that “[e]xcept as otherwise provided in this section, the implementation of the Settlement and the reintroduction of California Central Valley Spring Run Chinook salmon pursuant to the Settlement and section 10011, shall not result in the involuntary reduction in contract water allocations to Central Valley Project long-term contractors, other than Friant Division long-term contractors.” (SJRRSA, § 10004(f).) Accordingly, it is essential that the Proposed Rule be crafted to avoid water supply impacts to the Authority members from reintroduction of spring-run Chinook.

The Authority appreciates NMFS’s efforts to draft the Proposed Rule to ensure that the reintroduction of an experimental spring-run Chinook population to the San Joaquin River does not impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling third parties, as mandated by the SJRRSA. The Authority also appreciates the out reach by NMFS staff before and during the comment period to explain its program and solicit input. However, the Authority is concerned that the Proposed Rule and the draft Technical Memorandum, as currently drafted, may not adequately protect unwilling third parties against water supply impacts that could result from reintroduction of spring-run Chinook salmon to the San Joaquin River. At least, there is substantial uncertainty whether the measures identified so far will achieve the statutory mandate, and resolution of some important aspects of the problem is being deferred to annual decisions. This comment letter identifies those concerns and is responsive to NMFS’s specific request for feedback on the extent to which NMFS has provided protections for third parties as required by the SJRRSA. (78 Fed.Reg. 3381, 3387.) The Authority looks forward to working with NMFS in refining the Proposed Rule and the Technical Memorandum, and on issues with implementation going forward.²

¹ Stipulation of Settlement dated September 13, 2006, in *NRDC v. Rodgers*, Case No. CIV. S-88-1658-LKK/GGH, United States District Court, Eastern District of California.

² The Authority incorporates by reference its previous comments related to the San Joaquin River Restoration Program. The comments in this letter focus primarily on impacts to CVP and State Water Project (“SWP”) export pumping and related operations, a matter that affects all Authority members.

A. Comments Regarding Proposed Rule

1. The Proposed Rule Is Lacking A Provision Mandated By Section 10011(c)(3) Of The SJRRSA

SJRRSA section 10011(c)(2) requires NMFS to issue a final rule pursuant to section 4(d) of the ESA. SJRRSA section 10011(c)(3) provides that “[t]he rule issued under paragraph (2) shall provide that the reintroduction will not impose more than de minimus: water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction.” The Proposed Rule, however, does not include such a provision.

Response #8

We propose that NMFS add a new paragraph (7) to the Proposed Rule. That new paragraph (7) could simply follow the words of the statute, and include its definition of the “third parties.” Paragraph (7) would then provide: “The reintroduction of CV spring-run Chinook salmon shall not impose more than de minimus water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction. A ‘third party’ means persons or entities diverting or receiving water pursuant to the applicable State and federal laws and shall include Central Valley Project contractors outside of the Friant Division of the Central Valley Project and the State Water Project.”

2. The Proposed Rule Should Include Authorization For All Take NMFS Attributes To CVP And SWP Operations, Not Only Take “At” The Export Pumps

Paragraph (6)(ii) of the Proposed Rule provides the following “special take exemption” outside of the designated experimental population area:

Any taking of CV spring-run Chinook salmon at the CVP and SWP projects in the Delta that originates from reintroduction to the San Joaquin River. NMFS will annually determine by January 15 the share of take at the CVP and SWP facilities that originates from the reintroduction to the San Joaquin River.

Response #9

(78 Fed.Reg. at 3389.) As drafted, this special take exemption could be interpreted to cover only take at the CVP and SWP pumps in the Delta. However, take of spring-run Chinook at the CVP and SWP Delta export pumping facilities is only one form of incidental take that NMFS has attributed to the CVP and SWP (collectively, the “Projects”).

Individual Authority members, however, may be further impacted by reintroduction activities upstream of the Delta in the San Joaquin River. We expect that those member agencies will provide additional comments.

In the Biological Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (June 4, 2009) (“2009 Salmonids BiOp”), NMFS described the Projects’ take in the Delta as follows:

In the Delta, incidental take in the form of death, injury, and harm to juvenile and adult . . . spring-run [Chinook salmon] . . . is anticipated due to changes in the Delta hydrology created by the operation of the DCC gates and at Jones (CVP) and Harvey Banks (SWP) export pumping plants (Delta pumping plants). This take includes reduced survival of juvenile . . . spring-run . . . diverted through the DCC into the central Delta from: (1) elevated water temperatures and poorer water quality within the central Delta; (2) losses due to entrainment at unscreened water diversions within the central Delta; (3) predation associated with the waterways of the central and southern Delta; (4) reverse flow conditions as a result of CVP/SWP pumping; and (5) direct loss at the Delta pumping facilities within the southern Delta. In addition, delays and increased straying are expected when adult salmonids encounter the backside of the DCC gates in the closed position after moving upstream through the Mokelumne River system from the San Joaquin River system.

Response #9

(2009 Salmonids BiOp, at p. 773.) Since NMFS has previously concluded that operations of the SWP and CVP result in incidental take in a variety of ways, the special take exemption for SWP and CVP operations should be broad enough to cover all the forms of incidental take of reintroduced spring-run within the Delta that NMFS may attribute to the Projects.³

To address the broad scope of effects that NMFS attributes to CVP and SWP operations, the Authority requests that the first sentence of the proposed special take exemption, under section 223.301(b)(6)(ii), be revised to read as follows: “Any taking of CV spring-run Chinook salmon related to CVP and SWP operations and facilities . . .” Likewise, the second sentence should be amended to read: “NMFS will annually determine by January 15 the share of take related to the CVP and SWP operations and facilities . . .” These edits would result in including take from any CVP and SWP operations within the exemption, regardless of the geographic location where take occurs.

³ The Authority disagrees with the broad scope of incidental take and other effects on spring-run Chinook that NMFS attributes to Project operations, and it has explained that disagreement in other forums. The point here is only that, correct or not, NMFS’s view of take related to Project operations may result in water supply impacts through regulatory action unless that take is exempted.

3. The Exemption For CVP and SWP Operations Should Apply To All Progeny Of The Reintroduced Fish, And Any Spring-Run Chinook That Are Spawned In The San Joaquin River Or Its Tributaries

The exemption in paragraph (6)(ii) of the Proposed Rule is limited to any spring-run Chinook salmon that “originates from the reintroduction to the San Joaquin River.” The preamble to the Proposed Rule explains that the “special take exemptions will apply to fish that originate in the San Joaquin River.” (78 Fed.Reg. at 3386.) These two descriptions differ, and hence it is not clear precisely what fish will be included within the exemption in paragraph (6)(ii).

The phrase “originates from the reintroduction” in the Proposed Rule presumably includes spring-run Chinook that are planted in the San Joaquin River and any of their progeny within the class of fish subject to the exemption. That would include any progeny of the reintroduced fish that in later generations may stray and spawn in tributaries of the Sacramento River. The Authority agrees those fish should be included within the scope of the exemption.

However, in another respect the phrase “originates from the reintroduction” defines the fish that are within the exemption too narrowly, and more narrowly than the preamble suggests NMFS intended. The progeny of any spring-run Chinook salmon that are already in the San Joaquin River system, and the progeny of future strays from the Sacramento River system, arguably would not be fish that “originate[d] from the reintroduction.” By contrast the preamble suggests those fish would be within the exemption. That is so because any spring-run Chinook that are spawned in the San Joaquin River, regardless of the origin of their parents, would “originate in the San Joaquin River.”

Response #10

Paragraph 6(i) creates an exemption for take in the lower San Joaquin River and its tributaries resulting from the diversion or receipt of water. That exemption applies to take of all “CV spring-run Chinook salmon,” regardless of whether the taken fish are reintroduced fish or their progeny. We understand this choice was based at least in part on the difficulty of distinguishing among spring-run Chinook salmon once they are in the San Joaquin River system.

Likewise, the fish subject to the exemption in paragraph 6(ii) for CVP and SWP operations and facilities should include all spring-run Chinook salmon that result from spawning in the San Joaquin River, regardless of parentage. That would be consistent with the choice reflected in paragraph 6(i), and with the intent expressed in the preamble. It would also serve to implement section 10004(f) of the SJRRSA, which provides that reintroduction must not result in reduced CVP or SWP contract water allocations.

In sum, paragraph (6)(ii) should be amended to include within the exemption both the spring-run Chinook salmon that are planted in the San Joaquin River fish and their progeny

(wherever they may later spawn), and also any spring-run Chinook salmon that are produced through spawning in the San Joaquin River, regardless of parentage.

Response #10

4. **The Final Rule Should Be As Definite As Possible About How NMFS Will Ensure No More Than *De Minimus* Water Supply Impacts From Reintroduction**

The Proposed Rule defers many of the details regarding how NMFS will avoid affecting water supply to later, annual decisions. Paragraph 6(ii) of the Proposed Rule provides that NMFS will annually determine by January 15 the share of take that originates from reintroduction of spring-run Chinook. It further provides:

This determination will provide a methodology for deducting San Joaquin River origin spring-run Chinook salmon from the operational triggers and incidental statements associated with any biological opinion that is in effect at the time for operations of the CVP and SWP facilities.

Response #11

The preamble to the Proposed Rule further explains:

[f]or take at the CVP and SWP facilities in the Delta, NMFS will annually calculate and document the proportionate contribution of CV spring-run Chinook salmon originating from the reintroduction to the San Joaquin River. NMFS will document this calculation by January 15 each year and will describe the method for calculating and deducting this share of CV spring-run Chinook salmon take from the operational triggers and incidental take statements associated with the June 2009 Biological Opinion on the Long-term Operations of the CVP and SWP or subsequent future Biological Opinions.

(78 Fed.Reg. at 3386.)

In addition, the Authority has reviewed the draft Technical Memorandum, which analyzes how the terms of the incidental take statement or operational triggers in the current, 2009 Salmonids BiOp may be triggered as a result of reintroduction of spring-run Chinook salmon, and NMFS's potential responses to those occurrences to prevent loss of water supply.

It is important that the regulation NMFS adopts now to prevent water supply impacts from reintroduction be as robust and definite as possible. Authority members already face substantial water supply uncertainty each year from the annual application of the 2009 Salmonids BiOp and the biological opinion regarding the delta smelt. Deferring resolution to

annual decisions about how to account for the impacts of reintroduced fish on water supply will increase uncertainty and tension each year regarding how potential impacts to water supply will be measured and avoided.

The current version of the Proposed Rule does not provide much certainty or definition. It defers to annual decisions regarding what proportion of take at the Project pumps, or fish counted under operational triggers, are of fish that resulted from implementation of the San Joaquin River Restoration Program. The method for making those determinations is not specified in the Proposed Rule, and apparently may change over time. The draft Technical Memorandum analyzes what effects the reintroduced fish may have under the 2009 Salmonids BiOp, and explores methods of accounting for the impact of the reintroduction program. But the Proposed Rule does not incorporate those or any other methods for making the annual determinations. Nor does the Proposed Rule include any criteria or standards for the methodology or annual decisions. There is no reason to postpone finalizing methods. The methods should be developed before the reintroduction occurs, and the uncertainties of the methods chosen should be disclosed and accounted for in implementation.

The Authority therefore urges NMFS to be as definite as possible in the regulation it adopts, and that the regulation minimize the scope of what NMFS will decide each year. We offer the following principles that should guide the regulation NMFS adopts:

Response #12

The Method Chosen Must Ensure NMFS Will Meet The Statutory Mandate: Whatever method NMFS adopts to account for the effects of reintroduction, that method must ensure that the agencies will meet the requirement for no more than *de minimus* water supply impacts. To the extent that the method NMFS chooses is inaccurate or incomplete, or involves substantial uncertainty, NMFS risks violating the statutory mandate. NMFS should therefore adopt a method that avoids causing water supply loss because of limited information. In implementation, it should account for uncertainty to ensure that it is meeting the *de minimus* mandate. For example, if the method chosen involves making an estimate of the number of out-migrating spring-run Chinook from the San Joaquin River system, NMFS should rely on the estimate at the higher end of the range.

Response #13

The Process For Annual Determinations Should Allow For Notice And Comment: To the extent that the regulation NMFS ultimately adopts still retains a provision for annual decisions, it should allow water users an opportunity to review and provide comment on the annual determination before the determination becomes final.

Response #14

Operational Triggers: The Proposed Rule and draft Technical Memorandum appropriately recognize that water supply impacts may result not only from exceeding the take estimated in the incidental take statement in the 2009 Salmonids BiOp, but also from “operational triggers” in the reasonable and prudent alternative. It is essential that the method adopted ensure that operational restrictions are not imposed on Project operations as a result of

Response #15

the presence of reintroduced spring-run Chinook salmon, whether under the incidental take statement or the terms of a reasonable and prudent alternative.

Response #15

Allowing For Changes In Regulations Including Biological Opinions: To comply with the statutory mandate, NMFS will have to account for changes in regulations affecting Project operations. The effects of reintroduction on water supply may change with changes in the NMFS biological opinion applicable to spring-run Chinook salmon and CVP and SWP operations. The Proposed Rule at least partially accounts for that circumstance by providing that the annual determinations will be made with reference to the “biological opinion that is in effect at the time.”

Response #16

5. Specific Comments On The January 28, 2013 Draft Technical Memorandum

The Authority understands that the Technical Memorandum is in draft. It further understands that NMFS staff are seeking input on what methods to use to account for the impact of spring-run Chinook salmon on water project operations, and accomplish the *de minimus* statutory mandate. Authority staff have committed to meeting with and providing further input to NMFS on these topics. The Authority appreciates NMFS acknowledgement of its obligation to avoid water supply impacts and its willingness to accept further input from now until the time the Proposed Rule is finalized. Below, we provide some comments regarding the current version of the Technical Memorandum.

The Technical Memorandum accurately observes that under the 2009 Salmonids BiOp, the introduction of additional spring-run Chinook to the San Joaquin River may affect current water project operations through the 1) the non-clipped winter-run take level method of identification based on length at date criteria, and 2) RPA actions IV.3.1 and IV.3.3 method of identifying non-clipped “older juvenile” Chinook based on length at date criteria.

Response #17

The Technical Memorandum relies upon the Butte Creek yearling spring-run release and recapture experiments of 2005 and 2006 to conclude that it is unlikely the San Joaquin River yearling spring-run will occur within the winter-run length range. However, in those experiments there were only 5 data points total, one year was a flood event, and 1 of the 4 fish was in the winter-run length range. There are not enough data to conclude the San Joaquin River yearling spring-run would not occur within the winter-run length range. In addition, genetic analysis of Mill and Deer Creeks juvenile spring-run Chinook resulted in yearling sized fish occurring within the winter-run length range. We therefore do not agree that reintroduced fish will not trigger criteria based on salvage of winter-run length fish.

The methods NMFS proposes to account for the number of San Joaquin River yearling spring-run salvaged at the CVP and SWP pumps are incomplete due to: 1) not disclosing the variation in the point estimates of either population sizes or survival rates at the various life stages of yearling spring-run; 2) not acknowledging relatively recent information on survival

rates on San Joaquin River juvenile Chinook through the San Joaquin River and Delta; and 3) not discussing the potential effect of the large straying rates of Sacramento Chinook into the San Joaquin River in introduced spring-run.

One of the factors NMFS will have to account for in assessing salvage at the Projects' pumps is the closer proximity of fish emigrating from the San Joaquin River system to the pumps. Salvage at the pumps should therefore reflect a relatively higher percentage of fish emigrating from the San Joaquin River system than the percentage from the Sacramento River system.

The Technical Memorandum proposes the possibility of using sentinel fish as surrogates for San Joaquin River yearling spring-run. However, there are potential problems with this method that are not addressed. These issues include the source and/or availability of those hatchery fish, and the effect of introducing those sentinel fish into the San Joaquin River and the potential for interbreeding.

The Technical Memorandum proposes some monitoring to try to determine the timing of San Joaquin River yearling spring-run emigration. It does not identify the entities that would conduct the monitoring, or sources of money for that monitoring. Considering funding limitations that exist now, it is uncertain if the monitoring will be implemented.

Response #17

The Technical Memorandum observes that accounting for naturally spawned spring-run Chinook from the San Joaquin River will be more challenging. NMFS is apparently deferring a decision on the final methodology to determine what proportion of older juvenile salvage at the CVP and SWP pumps resulted from natural spawning. However, the available methods for determining the proportion of San Joaquin River yearling Chinook are already understood, and there is little likelihood methods will change significantly in the near future. As the Technical Memorandum observes, it is possible now to do a genetic analysis of parentage. Granted, it is expensive, and must be done every year on a majority of the population. But it can be done, and it can be used for real-time decisions.

In sum, the Authority has a number of concerns with the approach reflected in the Technical Memorandum, and welcomes the opportunity to provide further input and suggestions as NMFS develops a final rule prior to reintroduction.

B. Comments Regarding the Draft EA

1. The Purpose And Need Statement Should Be Revised

The Draft EA states that "The purpose of the Proposed Action is to reintroduce spring-run Chinook into the San Joaquin River, by implementing the provisions of the Restoration Act, thereby fulfilling aspects of the Settlement, the Restoration Act, and elements of the Draft Recovery Plan." (Draft EA, at 1-10.) The Draft EA states that the "need for the action is to

Response #18

restore and maintain fish populations in the mainstem San Joaquin River, including Chinook salmon, in order to implement the provisions of the Settlement as conditioned by the Restoration Act.” (*Id.*) The purpose and need statement is too broad, in that it describes the overall purpose of the San Joaquin River Restoration Program. The Proposed Rule serves a narrower function within that broader program.

Response #18

The current “need” statement is overly broad as to “fish populations.” Although the Stipulated Settlement states that the “Restoration Goal” 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 Proposed Action here is focused on the reintroduction of spring-run Chinook. (Stipulated Settlement, at 4.) Therefore, the “need” for the proposed action is not the broader goal of restoring and maintaining “fish populations,” but rather, to restore and maintain a population of spring-run Chinook.

As a part of focusing the statement of purpose and need for the Proposed Rule, it should be revised to include the statutory mandates that NMFS adopt a rule under ESA section 4(d) governing incidental take, and that reintroduction not impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction. In addition, the statement should reflect the requirement of SJRRSA section 10004(f).

2. **The Proposed Rule’s Take Exemption Will Need To Be Revised To Satisfy The Objective Of *De Minimus* Water Supply Reductions**

The Draft EA identifies the following as one of the objectives of the Proposed Action:

[p]romulgation of take exemption measures using section 4(d) of the ESA for the conservation of the species, and to ensure that spring-run Chinook reintroduced to the San Joaquin River will not impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling third parties, as defined under Restoration Act section 10011(c)(1), due to such reintroduction.

Response #19

(Draft EA, at 2-1.) The Authority appreciates that NMFS is identifying satisfaction of the SJRRSA’s “*de minimus*” mandate as one of the objectives of the Proposed Action. However, the Authority is concerned that the proposed 4(d) take exemptions do not adequately ensure that the “*de minimus*” mandate will be satisfied. To ensure that the stated “*de minimus*” objective is satisfied, the Authority requests that NMFS revise the special take exemption for CVP and SWP facilities and operations, as described in Section A. of this comment letter.

3. **The Section 4(d) Rule Alternatives Analysis Should Analyze Alternative Ways To Accomplish The “De Minimus” Mandate**

The Draft EA does not discuss or analyze alternative ways to accomplish the *de minimus* mandate in the SJRRSA. By contrast, the Draft EA includes alternatives analysis regarding donor stock, defining the geographic area for the experimental population, and duration of designation. NMFS’s NEPA analysis should include an analysis of alternatives for accomplishing the *de minimus* mandate. Refocusing the statement of purpose and need, as discussed above, would help drive an improved alternatives analysis.

The Draft EA states:

The Restoration Act requires NMFS establish a 4(d) rule governing incidental take of reintroduced spring-run Chinook that also ensures minimal impact from reintroduction to specific third party water users. Congressional intent is clearly stated that the effect of the reintroduction shall not incur additional liabilities to specific facilities that already affect spring-run Chinook of the ESU . . . It must apply to the ESU in a way to account for, and to discount the incidental take of individuals generated by the reintroduction to the San Joaquin River as a result of diverting or receiving water pursuant to Federal and State water rights.

Response #20

(Draft EA, at 2-3.) This statement makes it clear that the 4(d) rule must ensure that reintroduction does not result in adverse impacts to CVP and SWP water supplies, supplies that have already been reduced by regulations intended to protect spring-run Chinook and other listed fish. To satisfy the Congressional intent of the SJRRSA, NMFS must broaden the scope of the exemption applicable to CVP and SWP facilities and operations, as described above.

4. **The Draft EA’s Conclusion That Reintroduction Will Not Adversely Affect Agricultural Resources Or Land Use Assumes NMFS Will Be Successful In Avoiding More Than *De Minimus* Impact To Water Supplies**

The Authority’s members have suffered significant loss of water supply under the requirements in the 2009 Salmonid BiOp. This experience teaches that reintroduction of spring-run Chinook poses a substantial risk of further losses of water supply if NMFS does not implement firm and definite measures to avoid that impact.

Response #21

The Draft EA finds there will be no adverse effects on agricultural resources from reintroduction of spring-run Chinook salmon. It states:

The Restoration Act requires that reintroduction of spring-run Chinook to the San Joaquin River shall be done only pursuant to section 10(j) of the ESA with special provisions under ESA section 4(d). Within the NEP area, NMFS's proposed 4(d) rule would provide coverage for take that occurs incidental to otherwise lawful activities. To the extent the 4(d) rule applies outside of the NEP, the rule protects agricultural and forestry resources by ensuring no more than de minimus: water supply reductions, additional storage releases or bypass flows on unwilling third parties. These take exemptions will allow the reintroduction of spring-run Chinook to have little to no impact on agricultural and forestry activities. (Draft EA, at 4-12.)

Likewise, the Draft EA finds no adverse impacts to land use:

Delta pump operations would not be effected by the reintroduction of spring-run Chinook to the San Joaquin River. As outlined in the Restoration Act, reintroduction is required to have a *de minimus* effect upon Third Parties diverting or receiving water pursuant to applicable state and federal laws, which includes the Delta pumping facilities. The proposed rules include language to exempt these activities from take of spring-run Chinook that originate from the San Joaquin River. This can be achieved by identifying San Joaquin River spring-run Chinook proportional contribution to take at the pumping facilities, relative to the take of spring-run Chinook from other watersheds, and excluding that amount from spring-run Chinook incidental take allowances established for Sacramento Valley origin fish. The method of these calculations will be identified each year by NMFS in a technical memorandum, issued by January 15th. This approach is similar to, and will be integrated with, incidental take calculations that have been applied to minimize take of other fish populations at the export facilities. Consequently the reintroduction will not add a regulatory burden to that process. Information for that calculation of proportionate take attributable to the reintroduction will be available. Additionally, until spring-run Chinook begin reproducing in the wild, all fish released into the San Joaquin River will be marked or identifiable. This will allow for several years of data on fish definitively from the reintroduction to inform methods for the calculation. Therefore, the implementation of Area Alternative 1 have would de minimus or no impact on Third Parties and their

Response #21

water use activities because of the reintroduction of spring-run Chinook.

(Draft EA, at 4-23, 4-24; *see* Draft EA at 4-27 [similar statement regarding impacts of implementing Area Alternative 2].)

Response #21

These conclusions assume the success of NMFS's efforts to ensure no more than *de minimus* water supply impacts from reintroduction. Yet, at this juncture the method by which NMFS will accomplish the *de minimus* mandate is still undefined, and will be left to annual decisions. Without definition of methods, and specific measures to address uncertainty, it is not reasonable to assume for purposes of the Draft EA that NMFS will be successful every year in avoiding more than *de minimus* water supply impacts.

5. NMFS Must Prepare An EIS

Under these circumstances, NMFS should prepare a detailed environmental impact statement ("EIS") rather than rely on an environmental assessment for its action. Section 6.03e.2(e) of NMFS's NEPA procedures provide that "[e]stablishment of some experimental populations may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action."⁴ Those procedures further provide that "[s]ection 4(d) rules may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action." (NMFS NEPA Procedures, § 6.03e.2(a).)

Response #22

NEPA requires an EIS for "major Federal actions significantly affecting the human environment." 42 U.S.C. § 4332(c). Projects "which will or may cause a significant impact on the quality of the human environment, require preparation of an EIS." (NMFS NEPA Procedures, § 6.01.) Determining significance requires a consideration of both context and intensity. (*Id.* § 6.01b.) Regarding context, the reintroduction of spring-run Chinook to the San Joaquin River is of great interest throughout the San Joaquin River watershed. The potential implications for salmon recovery and water project operations, and water users, extend through most of California. Factors considered in weighing intensity include both beneficial and adverse impacts, the degree to which impacts to the human environment are likely to be highly controversial, the degree to which effects are highly uncertain or involve unique or unknown risks, and the degree to which listed species are adversely affected. The potential impacts of the proposed action here fit the context and intensity criteria for significance.

While NMFS has expressed an intention to avoid water supply impacts, at this point the methods by which it will do so remain largely undefined. "Where an EA reveals that significant impacts will or may occur, the [responsible project manager] must prepare an EIS." (*Id.* §

⁴ Environmental Review Procedures For Implementing The National Environmental Policy Act, NOAA Administrative Order Series 216-6, May 20, 1999 ("NMFS NEPA Procedures").

6.03c.1(a.) The potential that substantial water supply impacts will result if NMFS's methods to avoid such impacts fail requires the preparation of an EIS before NMFS adopts a final rule and proceeds with reintroduction.

6. The Cumulative Impacts Analysis Should Analyze The Circumstances Under Which The Section 7(a)(2) Consultation Requirements May Be Triggered

The Draft EA states:

In addition to recovery planning, Federal agencies must consult with NMFS under section 7 of the ESA on any action that is likely to adversely affect listed species under NMFS jurisdiction, including spring-run Chinook salmon. Non-federal actions that may result in "take" of ESA listed species as defined through section 9 or 4(d) are required to obtain appropriate authorization to avoid violation of the law. Reintroduction of ESA listed species to an area where they do not currently occur could add to the regulatory requirements for Federal and non-federal actions. However, the proposed NEP designation provides substantial regulatory relief from section 9 take prohibitions, hence cumulative effects of the reintroduction as a NEP on present and future activities will be negligible. Also, when a NEP is in effect, the section 7(a)(2) consultation requirement would be suspended, but the section 7(a)(4) conference requirement would remain in effect. A conference between a Federal agency and the NMFS consists of informal discussions concerning an action that is likely to jeopardize the continued existence of the proposed species or result in the destruction or adverse modification of the proposed critical habitat at issue. The occurrence of conferences under the proposed action are likely to be limited, hence the cumulative effect of the reintroduction as a NEP on regulatory requirements for present and future activities will be negligible.

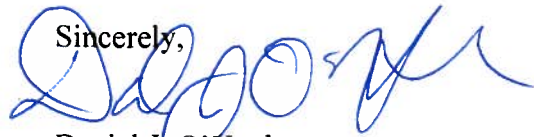
(Draft EA, 5-2.) This statement's conclusion that "the cumulative effect of reintroduction as a NEP on regulatory requirements for present and future activities will be negligible" fails to consider that the section 7(a)(2) consultation requirement could apply to Federal actions if the experimental population is later determined to be "essential" and the proposed Federal action is likely to adversely affect spring-run Chinook within the experimental area. The Authority requests that the "Cumulative Impacts" section of the Draft EA be revised to analyze the possibility that the section 7(a)(2) consultation requirement could be triggered for Federal actions that are likely to adversely affect the reintroduced spring-run Chinook, in certain circumstances.

Response #23

Conclusion

The Authority appreciates this opportunity to comment on the Proposed Rule and the Draft EA. The Authority looks forward to working with NMFS to develop a reintroduction program that meets the restoration goal of the SJRRSA in a manner that does not cause adverse water supply impacts to the Authority's member agencies and the water users and communities they serve.

Sincerely,



Daniel J. O'Hanlon
Kronick, Moskovitz, Tiedemann &
Girard,
on behalf of the San Luis & Delta-
Mendota Water Authority and the
Westlands Water District

THOMAS M. BERLINER
DIRECT DIAL: +1 415 957 3333
PERSONAL FAX: +1 415 520 5835
E-MAIL: tberliner@duanemorris.com

www.duanemorris.com

March 4, 2013

VIA EMAIL

Elif Fehm-Sullivan, Fisheries Biologist,
Protected Resources Division, Southwest Region,
National Marine Fisheries Service,
650 Capitol Mall, Suite 5-100,
Sacramento, California 95814.
Email: SJRspring.salmon@noaa.gov.

Rhonda Reed
Protected Resources Division
National Marine Fisheries Service
Central Valley Office
650 Capital Mall, Suite 5-100
Sacramento, CA 95814

Re: Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"

Dear Ms. Fehm-Sullivan and Ms. Reed:

The following comments to the Draft Environmental Assessment referenced above (DEA) are offered on behalf of the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition (referred to for convenience collectively as "Exchange Contractors"). By separate letter, the Exchange Contractors will comment on the proposed 4(d) take provisions and Section 10(j) designation of non-essential experimental population set forth in the proposed rule issued at 78 Fed. Reg. 3381 (January 16, 2013). For your convenience, a copy of that letter is appended hereto.

General Comments

1. Lack of Funding.

In comments to the Draft Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/R), the Exchange Contractors raised the concern that the Settling Parties, including the National Marine Fisheries Service (NMFS), have erroneously assumed that all necessary funding will be made available to fully implement the Settlement referred to in DEA Section 1.1.2. While perhaps historically there was some basis, however remote, that all of the funding necessary to fully implement the settlement would be forthcoming, based upon more recent information that understanding is no longer valid. This newly discovered information includes assurances from members of Congress that further federal funding will not be forthcoming as well as the substantial increase in costs of necessary expenditures identified by Reclamation in its Framework for Implementation. At the time the Settlement was presented to the United States Congress in support of the necessary implementing legislation, estimates of the cost of the San Joaquin River Restoration Program (SJRRP) ranged from \$250-800 million. In the Framework for Implementation, Reclamation has identified actions that are necessary in addition to those set forth in the Settlement to assure successful reintroduction of the San Joaquin spring-run Chinook salmon. Further, Reclamation has appropriately identified in the Record of Decision (ROD) at Section 6.2 that contingencies must be developed in the event that full funding is not available. The ROD provides that Reclamation will prepare each year an Annual Work Plan of projected SJRRP activities that “will be subject to revision to respond to changing conditions, including environmental, budgetary or otherwise.” Moreover, “[c]onsistent with and in the process of fulfilling the requirements set forth in the Settlement and Act, and in consideration of available resources,” the ROD also establishes a list of SJRRP activities that will be expedited over other activities.

Response #24

NMFS is aware of the current level of funding available for the SJRRP, the fact that additional funding is not going to be available, that the SJRRP is currently underfunded based on original estimates, and that additional actions and costs that have been identified by Reclamation in the Framework for Implementation. In a situation such as this, where changed circumstances affect the factors relevant to the development and evaluation of alternatives, the agency “must account for such change in the alternatives it considers.” (*Natural Resources Defense Council v. United States Forest Service*, 421 F.3d 797, 813 (9th Cir. 2005) [finding that error in interpreting report affected the economic and wildlife factors that the Forest Service used in developing and evaluating the alternatives considered]; *Alaska Wilderness Recreation & Tourism Ass’n v. Morrison*, 67 F.3d 723, at 730-731 [“While we cannot predict what impact the elimination of the [long-term] contract will have on the Forest Service’s ultimate land use decisions, clearly it affects the range of alternatives to be considered”].) Here, the DEA violates NEPA by failing to analyze the SJRRP assuming no additional funding or the necessity for additional funds identified in the Framework for Implementation.

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Page 3

2. Less than Full Implementation.

The DEA does not analyze the impacts on the successful reintroduction in the event that less than all measures identified in the Settlement are implemented. Yet, in multiple sections of the DEA, NMFS states that “the flow and habitat improvements to be implemented by the SJRRP represent the best opportunity to have spring-run Chinook reintroduced to the San Joaquin River.” (Page 5-1¹). Further, the DEA does not contain any analysis of the newly identified actions beyond those set forth in the Settlement that Reclamation has identified (in close cooperation with NMFS and other Settling Parties) in the Framework for Implementation that are necessary for the successful reintroduction of spring-run Chinook salmon to the San Joaquin River.

Response #25

3. No Analysis of Individual Projects and Cumulative Effects Thereof.

Reclamation is currently pursuing two projects in furtherance of the Settlement. These are the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project and the Mendota Pool Bypass and Reach 2B Improvements Project. (See Mendota Pool Bypass and Reach 2B Improvements Project, Project Description Technical Memorandum and the Draft Environmental Assessment/Initial Study and Finding of No Significant Impact/Mitigated Negative Declaration for the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project.) Each of these projects are considered necessary for the successful reintroduction of spring-run Chinook salmon. Each of these projects will have a cumulative effect upon the spring-run and the human environment. There is no analysis of the effect of these projects on the reintroduction of spring-run Chinook salmon, nor is there any analysis of the effect of subsequent projects required to be implemented by the Settlement. Similarly, there is no analysis of the failure to implement either of the above projects or subsequent projects on a successful reintroduction of spring-run Chinook salmon. (*Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) [finding EIS inadequate for failing to address reasonably foreseeable cumulative impacts]; *Border Power Plant Working Group v. Department of Energy*, 260 F.Supp.2d 997, 1033 (S.D. Cal. 2003) [failure to analyze cumulative impact of project on water quality and quantity rendered Environmental Assessment “inherently inadequate.”].) For instance, at page 1-5 the DEA acknowledges “reintroduction will begin with actions appropriate to existing habitat and to refining methods that would be used. Succeeding actions are expected to have more likely success as the habitat improvement and accompanying actions in the Settlement are implemented.” Yet, no analysis is set forth in the event that the succeeding actions are implemented in whole or in part or not implemented at all.

Response #26

¹ Words of similar effect are also found on the following pages: 1-5, 2-11, 4-16 (Until the habitat improvement projects are completed, in river survival is expected to be low, except in wet years.)

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4. Subsidence.

NMFS is aware that recently discovered significant subsidence has and is still occurring in the Restoration Area and adjacent thereto. The Exchange Contractors have previously commented on the subsidence problem. Please see those comments set forth in the Supplemental Comments to the Final PEIS/R Based on New Information from the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition submitted August 15, 2012. See also, the Exchange Contractors Protest to the United States Bureau of Reclamation Petitions for Change to License 1986 and Permits 11885, 11886 and 11887 (Applications 23, 234, 1465 and 5638), pages 41-42, submitted to the State Water Resources Control Board on June 18, 2012, and the Supplemental Information to Protest of USBR Petitions for Permits 11885, 11886, and 11887 and License 1986 (Applications 23, 243, 1465, and 5638) re San Joaquin Restoration Program, pages 6-7, submitted to the State Water Resources Control Board on August 31, 2012. Those comments are incorporated herein as though fully set forth.

The subsidence is the result of recently initiated deep well pumping from under the Corcoran Clay for overlying lands. Differential subsidence on the scale of up to 0.6 feet per year has been documented within the study area of the SJRRP near Western Madera. Since 2008, subsidence in the study area has been as much as 1.2 feet. The current level of subsidence is as much as 4 feet and freeboard at Sack Dam has been reduced to but a few inches. The SJRRP will need to determine how to address existing and increasing future subsidence. The extreme rate of subsidence may have a significant impact on the SJRRP schedule to complete the planning, design and construction of the Phase I projects. To date the subsidence has resulted in a halt to the further engineering and construction of the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project. Additional Phase I facilities and river reaches that will be impacted include:

- Flow capacity of Reaches 3 and 4A
- Flood flow capacity in the Chowchilla bypass
- Flood flow capacity in the Eastside Bypass
- Modifications at the Reach 4B headgate
- Modifications to the Sand Slough Control Structure
- Modifications in the San Joaquin Reach 4B1

Specific Comments

Section 1.3.1.1. Proposed Designation Will Further the Conservation of the Species.

This Section acknowledges that to achieve the restoration goal, the Settlement requires a combination of channel and structural modifications and habitat improvements, water releases and the reintroduction of Chinook salmon. It further states "with these actions, the prognosis for

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spring-run Chinook populations to return is good.” (citation omitted). Presumably, without one or more of these actions, the prognosis for spring-run Chinook populations to return is less than good. No analysis is provided of the effect on spring-run of less than full implementation of the foregoing measures.

Section 1.4.1. San Joaquin River Restoration Program Environmental Impact Statement/Report.

This section states that the PEIS/R evaluated the “potential direct, indirect, and cumulative impacts on the environment at a program level that could result from implementing the Settlement consistent with the Restoration Act [citations omitted].” However, the PEIS/R did not provide an environmental analysis of the various structural and habitat improvements that needed to be made. Rather, it assumed those were common elements and provided no actual analysis of the impacts of implementing those measures.

Response #29

The PEIS/R analyzed reintroduction of spring run Chinook with regard to hybridization, competition and disease. This analysis was conducted at the program level. As stated in the Exchange Contractors previously submitted comments to the PEIS/R, the analysis of impacts to salmon from the SJRRP, the impacts to adjacent landowners, agricultural interests, and water supply, was at a programmatic level. Yet, the DEA does not contain the level of analysis required to assess the impact of reintroduction of salmon into the upper San Joaquin River with respect to the aforementioned interests.

Section 1.6. Action area.

Included in the action area is not only the San Joaquin River but the flood control bypasses. The 4(d) rule must cover flood control activities in the Kings River, San Joaquin River and flood control bypasses.

Response #30

Section 2.0. Proposed action and alternatives.

The section states that the reintroduction process will be implemented such that in any given year the SJRRP will consider the condition of salmon populations and the likely success of reintroduction of spring run. How will this latter analysis be done? What factors will be considered? How will varying levels of success regarding levels of river improvements be taken into account in this analysis?

Response #31

Section 2.3.1. 10(j) area alternatives.

The preferred alternative is area alternative 2. Area alternative 2 describes the NEP area as the restoration area of the San Joaquin River from Friant Dam to the Merced River and the Kings River to the San Joaquin River. Area alternative 2 excludes the Eastside tributaries on the lower San Joaquin. It is unclear why the tributaries are excluded from the NEP area given that

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there are no established populations of spring-run and only at best questionable reports of spring-run straying to these rivers. The spring-run are at best strays from the Sacramento basin.

Within this section is a subparagraph "a", regarding take exemption on the tributary rivers. The discussion notes the legal requirement to not impose more than a *de minimis* water supply impact, etc. on unwilling third parties. The third-party designation includes the Exchange Contractors. There may not be more than a similar *de minimis* impact on the Exchange Contractors.

Response #32

Section 2.3.2. 10(j) duration alternatives.

It is essential that the 10(j) experimental population designation remain in effect well beyond 2025. It is now evident that the settlement will not be fulfilled by 2025, nor will the measures included in the Framework for Implementation. It is likely several decades before these measures will be completed. Until such time as all of these improvements or actions are taken, and it can be demonstrated that the salmon population is not only self-sustaining but thriving, the 10(j) designation should remain.

Response #33

Section 3.2.1. Life history.

The description of the life history of the spring-run Chinook is that when it swims upstream from the Delta it goes to the Sacramento River. There is no indication that spring-run migrate to the San Joaquin River. This is additional evidence that the entire San Joaquin basin should be designated as an NEP area.

Response #34

Section 3.2.4.3. Diversity.

On page 3 – 3, lines 32-36 the DEA discusses potential sources of phenotypic spring running Chinook that have been observed on the San Joaquin River tributaries. No citation is provided for the potential sources of these salmon. Please provide a citation to back up the hypotheses set forth.

Response #35

Section 3.3.2.3. Tuolumne River.

On page 3 – 18, line 6-7, no citation is provided for the assumption that spring-run Chinook in some numbers "undoubtedly" ascended the main stem a considerable distance. Similarly, no citation is provided for the statement at lines 15-17 that there have been reports of adult Chinook in the Tuolumne in the spring months of April and May.

Response #36

At line 21-25 the DEA states that a "hard look" needs to be taken at information regarding the potential presence of spring-run Chinook. Yet, the statements set forth in the DEA are without any support to authoritative accounts of historical spring run. A "hard look" requires a hard look at the evidence as well as the analysis. The evidence cited is at best sparse and

speculative. Substantiation should be provided.

Response #36

Section 3.4.2. San Joaquin River from Friant Dam to Merced River.

At page 3 – 21, commencing line 1, the habitat in Reach 1 is described. The description cites concerns with existing in-channel and floodplain pits that reduce native habitat, increase river water temperatures and provide increased habitat for non-native species (which presumably leads to predation). In response to comments to the PEIS/R, Reclamation downplayed the significance of the gravel pits and the predation problem. (See e.g. Final Program Environmental Impact Statement/Report for the San Joaquin River Restoration Program, July 2012 (“Final PEIS/R”), pp. 3.8-260 (EC1-110), 3.8-262-63 (EC1-115), 3.8-283-84 (EC1-151f), 3.8-292-93 (EC1-164), 3.8-296-97 (EC1-174), 3.8-305-06 (EC1-191), 3.8-315-316 (EC1-205, 206a), 3.8-324-25 (EC1-222), 3.8-325-26 (EC1-223a).)

Response #37

At line 16-17 in the section which describes Reaches 2-5, it is stated that there are projects proposed for the SJRRP to improve habitat conditions and support flows that would permit juvenile rearing and adult/juvenile migration. Is there any analysis to support or quantify the extent to which improved habitat conditions or flows would permit such beneficial fish conditions? Please provide citations.

Section 3.4.3. San Joaquin River Tributaries.

At lines 19-21 it is stated that anadromous fish populations on the San Joaquin tributaries are affected by flow and water temperatures. A recent study conducted in conjunction with the hydropower relicensing on the Tuolumne River concludes that 76% to 98% of juvenile salmon are lost to predation. (Predation Study Report, Don Pedro Project FERC No. 2299 (W&AR-07), January 2013.) How does this loss to predation compare with any impacts associated with flow and temperature? It would appear if up to 98% are lost to predation, only a small percentage are affected by flow and temperature.

Response #38

Section 3.5. Fish Species Within the San Joaquin River Basin.

Table 3 – I0 catalogs the fish found in the San Joaquin River basin and in particular in Reaches 1-5. It is noted that largemouth bass appear in Reaches 1,2,3, and 5. If Reach 4 is rewetted, bass will habituate there as well. How will the presence of bass adversely impact the restoration effort given the likely high predation rate such as that recently documented on the Tuolumne River?

Response #39

Section 3.5.2. Predation and Disease.

This section discusses predation as being a significant factor affecting juvenile salmon. Yet, in the PEIS/R a contrary position was taken. (See e.g., Final PEIS/R, pp. 3.8-283-84 (ECI-

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151f), 3.8-296-97 (EC1-174), 3.8-315-316 (EC1-205, 206a), 3.8-324-25 (EC1-222), 3.8-325-26 (EC1-223a.) Please explain why a different position is taken in the DEA as compared to the PEIS/R.

Response #40

Section 3.6.3. Hatchery facilities.

The Interim Facility and the full-scale Conservation Hatchery Facility must be isolated from the San Joaquin River to prevent the escape of unmarked spring-run Chinook salmon until such time as full take protection is provided.

Response #41

Section 3.6.4. Land Use.

At page 3 – 34 public agencies are identified that occur within the restoration area. The listing fails to include the local public water agencies including the Central California Irrigation District, the Firebaugh Canal Water District, Henry Miller Reclamation District, and local cities.

Response #42

Table 3 – 12 and the text that follows on page 3 – 35 appear inconsistent regarding the acreages and percentages of land-use within Reach 1.

Section 3.6.5. Water quality.

At lines 2-5 it is stated that water quality improvement would occur regardless of reintroduction of spring-run. This appears to be an inaccurate statement as the hydrographs that are called for in the Settlement are designed specifically for spring-run benefit. There would be no basis for the hydrographs without the presence of spring-run. There is no analysis of what hydrographs would be necessary for fall run Chinook.

Response #43

Section 3.6.5.1. Water Temperature.

In the PEIS/R the occurrence of high water temperatures was downplayed as a significant limiting factor. The DEA notes high temperatures that are likely to occur in the San Joaquin River in the restoration area. How will these high temperatures adversely impact restoration efforts?

Response #44

Section 3.6.7. Climate change.

There is speculation regarding the potential water temperature impact to the watershed above Friant Dam due to climate change. Please provide citations to support the notion that water temperatures in the upper San Joaquin River will somehow be spared from significant increases associated with climate change.

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Section 4.1. Introduction. (Environmental consequences).

With respect to the release of salmon to the San Joaquin River, it is stated the changes in river flow and related restoration projects are evaluated in the PEIS/R. The PEIS/R does not provide an evaluation of the numerous projects identified in the settlement.

Response #46

Section 4.2.1.3. Southern DPS of Green Sturgeon.

How will passage of green sturgeon be accomplished given the impediments that currently exist?

Response #47

Section 4.3.2. Fish.

At lines 22-29 is speculated that with increased flows and the return of spring-run Chinook salmon the number of predators in the restoration area will not increase. Please provide authority this conclusion. For example, one result of the Tuolumne Study (Predation Study Report, Don Pedro Project FERC No. 2299 (W&AR-07), January 2013.) was a finding that there was no trend relative to flow for habitat use overlap between Chinook salmon and predators. (Table 5.4-3 on page 5-21.)

Response #48

At lines 30-36 it is stated that barriers to prevent fall-run and spring-run hybridization will be developed and maintained. Where is this discussed in the PEIS/R or other authorities?

On page 4 – 9 regarding predation on the upper San Joaquin River, it is assumed that predation will be similar to the levels on the tributaries. The recent study on the Tuolumne indicates predation rates are very high and independent of flow. If predation is this high in the Restoration area what will be the impact on spring run? What is the basis for that conclusion?

Section 4.3.5. Land-use.

Regarding the impact on agricultural resources and forestry, it is stated that if permission is granted to access private land for collection activities, that potential impacts will be reduced to a non-significant level. Whether permission to access private lands is granted or not has nothing to do with the impacts that will occur. Simply having permission to access the land does not ensure that there will not be adverse environmental impacts.

Response #49

Section 4.6. Area Alternative 2 (preferred alternative).

It is stated that on the tributaries, water activities will be exempted from the take provisions. Agricultural, municipal and similar uses should also be exempted.

Response #50

Within the NEP area, in addition to agricultural uses, will water diversion and

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management uses be included in the take exemptions?

Response #50

The PEIS/R discusses impacts on water related uses, but appears to focus only on the provision within the Restoration Act regarding the *de minimis* impacts. However, the Restoration Act also prohibits the imposition of costs not otherwise voluntarily incurred. Any costs associated with restoration activities that are not voluntarily incurred must be absorbed by the SJRRP.

Section 5. Cumulative impacts.

There are multiple cumulative impacts in addition to the introduction of spring-run. Reintroduction impacts include all of the potential river improvements and habitat changes identified in the Settlement and in the Framework for Implementation. These cumulative impacts should be analyzed. They are not analyzed in the PEIS/R.

Response #51

Conclusion

Based on the above comments, the Exchange Contractors believe that a full EIS should be prepared to analyze the new discovered information that has emerged since the finalization of the PEIS/R or was not analyzed in the PEIS/R. This information includes Congressional assurances of no additional federal funding above the level already funded, new cost estimates by Reclamation that show core and levee costs at approximately \$1.1 billion and total Framework costs at over \$2 billion, significant subsidence that is and will continue to occur, and the new predation study results from the Tuolumne River. In addition, the Exchange Contractors have identified areas where additional analysis is required to fully assess the impacts of the reintroduction of spring-run to the San Joaquin River.

Response #52

The Exchange Contractors appreciate the opportunity to comment on the DEA. We look forward to continuing to work with NMFS to develop the SJRRP in a manner that fosters its success in a manner consistent with the Restoration Act and agreements among the Settling and Third Parties.

Sincerely yours,



Thomas M. Berliner

TMB:ccn

cc: San Joaquin River Exchange Contractors Water Authority
San Joaquin River Resource Management Coalition
San Joaquin Tributaries Authority

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San Luis and Delta-Mendota Water Authority
Alicia Forsythe - USBR

DM24140687.1

ATTACHMENT

**Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition on Proposed Rule for Introduction of a Nonessential Experimental Population of Spring-Run Chinook Salmon in the San Joaquin River Pursuant to Section 10(j) of the ESA and Related Incidental Take Protection Pursuant to Section 4(d) of the ESA,
NOAA-NMFS-2012-0221**

THOMAS M. BERLINER
DIRECT DIAL: 415-957-3333
PERSONAL FAX: +1 415 520 5835
E-MAIL: tmberliner@duanemorris.com

www.duanemorris.com

March 4, 2013

VIA E-MAIL

Ms. Elif Fehm-Sullivan, Fisheries Biologist
Protected Resources Division, Southwest Region
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

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CHERRY HILL
BOCA RATON
LAKE TAHOE

MEXICO CITY
ALLIANCE WITH
MIRANDA & ESTAVILLO

Re: Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition on Proposed Rule for Introduction of a Nonessential Experimental Population of Spring-Run Chinook Salmon in the San Joaquin River Pursuant to Section 10(j) of the ESA and Related Incidental Take Protection Pursuant to Section 4(d) of the ESA, NOAA-NMFS-2012-0221

Dear Ms. Fehm-Sullivan:

The San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition (referred to hereafter collectively for convenience as "Exchange Contractors") appreciate the opportunity to submit comments on the proposed rule for introduction of an experimental population of spring-run Chinook salmon to the upper San Joaquin River as part of the San Joaquin River Restoration Program (SJRRP) and the accompanying incidental take protection.

The Exchange Contractors are very appreciative of the outreach that has been conducted by NMFS regarding the proposed rule and other issues associated with the reintroduction of spring run Chinook salmon to the upper San Joaquin River. In particular, Ms. Rhonda Reed has met with the Exchange Contractors on numerous occasions. In the course of those meetings, Ms. Reed has requested comments on both the substance of the proposed rule and the format of the rule. Accordingly, the Exchange Contractors will comment on both form and substance.

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Drafting concerns

D.1. The summary should state that take exemptions include take in the upper San Joaquin River as well as the tributaries and the Delta. Further, while all lawful activities are exempted from take, in keeping with prior practice, examples of some particular activities exempted from take should be set forth.

D.2. Under the section "Statutory and Regulatory Framework for Experimental Population Design" it is stated that in order to comply with section 10011(c), NMFS considered any additional measures appropriate to address management concerns under local conditions, a process for data collection and periodic review of the status of the experimental population. It is unclear as to what provisions in section 10011(c) require these considerations. Section 10011(c) concerns protections for third parties. NMFS should explain how the foregoing considerations are relevant to protections for third parties.

D.3. Under the same section as referenced in D.2. The draft states that California Fish and Game Code section 1600, *et seq.* will help ensure the establishment and survival of the experimental population by protecting aquatic and riparian habitat. The draft states that Section 1600 *et seq.* requires that the Department of Fish and Wildlife be notified before anyone substantially diverts the natural flow of a river or stream. NMFS should explain the legal basis for contending that Section 1600 *et seq.* requires notification before someone substantially diverts the natural flow of a river or stream. In a recent court decision the Superior Court of California found that the Department of Fish and Wildlife did not have authority to restrict diversions under Section 1600 *et seq.* (*Siskiyou County Farm Bureau v. California Department of Fish and Game*, Case No. SC CV 11-00418, Siskiyou County Superior Court.) Rather, the court found that Section 1600 *et seq.* regulated physical alterations to the river bed and banks, but not simply water diversion.

D.4. The section entitled "Additional Management Restrictions, Protective Measures, and Other Special Management Considerations" should start with a summary that identifies how the 4(d) rule will be applied and which activities it covers.

D.5. Under the section entitled "Process for Periodic Review" the draft states that "while this monitoring is being conducted for purposes of making the reintroduction effort successful, we will use the information to also to determine if the experimental population designation is causing any harm to CV spring-run Chinook salmon that are part of the threatened ESU and their habitat, and then, based on this and other available information, determine if any changes to the experimental population designation may be warranted." Is this a reference to Sacramento-based spring-run? If so, the draft should be clarified to make this explicit.

D. 6. The amendment to the special rules for marine and anadromous species should be summarized at the beginning of the draft rule so that the reader knows what activities are

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covered, and the geographic areas that are covered. The reader should not have to wait until the very last two pages of the rule to find out specifically what is or is not covered.

Substantive concerns

S.1. Under the section "Background Information Relevant to Experimental Population Designation" it should be stated that the proposed experimental population will occur in the San Joaquin River upstream of the confluence with the Merced River, etc. as well as the tributaries to the San Joaquin River from the Merced River on downstream. The tributaries are outside of the current range of the CV spring-run Chinook salmon ESU.

S.2. Under the same section as S.1., the draft states that NMFS' recovery plan for CV salmon characterizes the San Joaquin River basin below Friant Dam as having a high potential to support a spawning population of reintroduced salmon "with implementation of the San Joaquin River Restoration Program (SJRRP)." The SJRRP includes channel and structural modifications to the San Joaquin River. The draft rule does not state whether failure to develop all or only part of the channel and structural modifications "will create habitat conditions... sufficient to support the establishment of CV spring-run Chinook salmon populations."

Pursuant to the Record of Decision (ROD) issued by the Bureau of Reclamation, if there are insufficient funds to develop the entire plan as set forth in the "Framework for Implementation", Reclamation will rely on a contingency plan as explained in section 6.2 of the ROD. This plan will prioritize certain actions. Consistent with the types of actions to be prioritized, the Exchange Contractors recommend that the projects that should be prioritized to assure successful passage of salmonids are the improvements to Sack Dam and installation of a fish screen in the Arroyo Canal, and a bypass around Mendota Dam and the installation of a fish screen for flows into the Mendota Pool. Presumably, NMFS is also aware of the subsidence problem near Sack Dam that is affecting flow in the San Joaquin River and nearby flood control system. The effects of subsidence must also be addressed when considering the likelihood of success of the 10(j) population.

S.3. Under the same section as S.1., the draft states that programs for strategic screening and participation in habitat conservation programs will be implemented in conjunction with SJRRP activities. What types of diversions will be screened? Will diversions below 300 CFS be screened? If flows below 300 CFS are not required to be screened, they must still be covered by the 4(d) rule such that incidental take is permitted. Will all diversions above 300 CFS be screened? Are there specific locations that NMFS has identified to be screened on a priority basis?

S.4. Under the section "Identification of the Experimental Population", it states that the SJRRP includes actions to prevent or reduce straying to false pathways. What actions are assumed to be taken that will reduce straying to false pathways? In 2011, due to flood operations, fall-run salmon successfully migrated upstream of the Hills Ferry Barrier and over 70 salmon

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perished in the Eastside Bypass. The Department of Fish and Wildlife did not have any measures in place to prevent straying once salmon migrated past the Hills Ferry Barrier.

S.5. The section entitled "Additional Management Restrictions, Protective Measures, and Other Special Management Considerations" states that take prohibitions would apply to the experimental population that has an intact adipose fin "as well as those that are adipose fin-clipped." It is our understanding that an agreement was reached with Reclamation and the U.S. Fish and Wildlife Service that adipose fin-clipped salmon in the experimental population area would not be subject to take prohibitions under the 4(d) rule currently in place for Sacramento spring-run Chinook salmon. This provision should stay in place until such time as adipose fin-clipped fish from the Feather River Fish Hatchery or any other facility will no longer be introduced into the San Joaquin River system.

S.6. Under the section entitled "Public Comment" NMFS requests feedback on six specific questions. The Exchange Contractors have attempted to address each of those areas in the above comments. However, we will also provide brief responses to each of the questions below.

(1) ***The geographic boundary of the designated experimental population.*** The geographical boundary should include the San Joaquin River upstream of the confluence with the Merced River, the Kings River and tributaries to the San Joaquin River from the Merced River downstream.

(2) ***The extent to which the experimental population would be affected by current or future federal, state, or private actions within or adjacent to the experimental population area.*** The experimental population will be affected by agricultural and water diversion activities, among others. These normal and lawful activities must be exempted from take prohibitions. Water diversion activities include, among others, the operation, maintenance, repair and replacement of water diversion structures including dams, intakes, pumps, canals, pipes, etc. some of these activities will occur in the San Joaquin River.

(3) ***Any necessary management restrictions, protective measures, or other management measures that we may not have considered.*** Exemption from take will cover all lawful activities. The rule should provide examples of protected activities, including diverting or receiving water, water spreading (such as to address the subsidence problems east of Sack Dam), and flood control activities.

(4) ***The extent to which we have provided protections for third parties as required by the SJRRSA.*** NMFS should address specifically how it will treat unscreened diversions on the San Joaquin River above the confluence with the Merced River as well as in false pathways, including irrigation canals and flood control channels. Examples of otherwise lawful activities that will be included under Section 223.301(B) should include activities related to diverting or receiving water including operation, maintenance, repair, and replacement of water diversion

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structures including dams, intakes, pumps, canals, pipes, etc. as well as flood control operations and spreading to address subsidence problems since the latter is related to water supply.

As NMFS is aware, there are a number of water diversion facilities located along the San Joaquin River in the restoration area. The member agencies of the Exchange Contractors operate a number of facilities, including the above-mentioned dams, intakes, pumps, canals, pipes, etc. The member agencies include the Columbia Canal Company, Central California Irrigation District, Firebaugh Canal Water District, and San Luis Canal Company. In the recently adopted 4(d) rule for the Deschutes watershed (78 Fed. Reg. 2893), take of Middle Columbia River steelhead was permitted "incidental to any activities related to or associated with the operation and maintenance of the Opal Springs Hydroelectric Project..." The facilities of the member agencies are not so precisely identified. However, it is necessary that all facilities operated by these member agencies for water diversion and water management purposes be exempted from take.

NMFS has appropriately made clear it is attempting to develop a rule that will not have more than a *de minimis* water supply impact on third parties. NMFS must also ensure that no costs will be imposed on third parties that are not voluntarily incurred. (San Joaquin River Restoration Settlement Act, Sec. 10009(a)(3).)

(5) *Whether we should propose the experimental population as nonessential.* Yes. According to the draft rule, the nonessential population designation will be reviewed every five years. If the spring-run are re-categorized as an essential population, the provisions of the San Joaquin River Restoration Settlement Act will still be applicable regarding the protections to third parties. If the San Joaquin spring-run Chinook salmon experimental population is re-categorized as an essential population, how will NMFS ensure there will be no impacts on the water, agricultural and flood control activities that should be exempted under this rule?

(6) *Whether the proposed designation furthers the conservation of the species and we have used the best available science in making this determination.* The designation will further the conservation of the species and will provide necessary agency flexibility in adaptively managing the fishery. However, the failure to consider the lack of funds, increased costs as identified in the Framework for Implementation, program delays, and the new subsidence condition (see Exchange Contractors' comments to Draft Environmental Assessment that accompanies this draft rule) do not constitute consideration of the best available science.

In light of cost increases and funding deficiencies, NMFS should develop a reintroduction strategy that seeks to achieve reintroduction in light of the new financial reality. NMFS could design the strategy as a layered contingency plan with assumptions about different levels of funding. Starting at the \$500-600 million range, given that that's what's available, and building from there would make sense. The Restoration Settlement Act does not compromise NMFS' independent decision-making authority. It must still apply its independent

Duane Morris

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judgment under the Endangered Species Act (“ESA”) as to how best to accomplish reintroduction. (See San Joaquin River Restoration Settlement Act § 10011; Stipulated Settlement ¶¶ 14 and 14(a).) NMFS is not required to follow the letter of the settlement, but may develop a strategy it views as consistent with its ESA obligations. The act makes it clear that the ESA is not amended and, therefore, NMFS has its own decision-making authority under sections 10(a) and 10(j).

In conclusion, the Exchange Contractors appreciate the efforts by NMFS to reach out to the affected third parties and to attempt to fashion rule that will have *de minimis* water supply impacts to third parties. Given the uncertainties associated with implementation of the SJRRP and the application of the 4(d) rule, including Delta take of SJR spring-run, an adaptive management approach appears warranted. The Exchange Contractors support the suggestion of the State Water Contractors that a process be developed to assess the amount of take in the Delta on SJR spring-run.

Thank you for this opportunity to comment.

Sincerely yours,



Thomas M. Berliner

TMB:dls

cc: San Joaquin River Exchange Contractors Water Authority
San Joaquin River Resource Management Coalition
San Joaquin Tributaries Authority
San Luis and Delta-Mendota Water Authority
Rhonda Reed - NMFS
Alicia Forsythe – USBR

DM24140913.1

Mill Creek Conservancy

40652 Highway 36 E
Mill Creek, CA 96061

Elif Fehm-Sullivan
Protected Resources Division
National Marine Fisheries Service
650 Capitol Mall # 5-100
Sacramento, CA 95814-4706
SJRSpring.Salmon@noaa.gov

February 26, 2013

Subject: Objection to Draft Environmental Assessment (DEA) for Nonessential Experimental Population Designation and 4(d) Take Provision for Reintroduction of Central Valley Spring-run Chinook Salmon to the San Joaquin River (SJR) below the Friant Dam

Dear Ms. Fehm-Sullivan

The Mill Creek Conservancy (MCC) was formed as a non-profit 501c 3 organization twenty years ago to protect the environmental integrity of the Mill Creek watershed. A fundamental element of our watershed and a key indicator species of the health of our watershed are the wild Mill Creek spring-run Chinook salmon. These fish have been designated an endangered species and Mill Creek is designated as critical habitat. Many federal and state grants and countless volunteer hours from the members of the MCC, Los Molinos Mutual Water Company, local landowners and local schools have been utilized to protect and foster the population of wild Mill Creek spring-run Chinook salmon,

Mill Creek offers these unique salmon a reprieve from human harassment and California's drought climate by providing pristine habitat, cold spring-fed mountain water and remote inaccessible canyons. To find habitat conditions for successful holding, spawning and rearing, these salmon must ascend to elevations in Mill Creek ranging from 1,500 to 5,000 feet. This is designated critical habitat for the survival of these fish. Neither a court order, a settlement for the San Joaquin River water users nor a charge to "reintroduce salmon" to the lower stretches of SJR can change those facts.

The proposed rule change to allow the "taking" of the wild Mill Creek spring-run Chinook salmon for an "experiment" in the San Joaquin River is totally unacceptable, bad science and a certain death sentence for each wild Mill Creek spring-run Chinook salmon utilized for this futile effort. The regulatory agencies charged with protecting our fish per the Endangered Species Act (ESA) are now attempting to create a loophole from the law from killing fish for an unwise experiment as part of a lawsuit settlement. The Mill Creek community has abided by the ESA law, consistently working to improve critical habitat and fish populations by facilitating riparian easements; promoting and participating in restoration projects; supporting water exchange programs to ensure proper passage flows for salmon; and working on a salmon management agreement. It is very disturbing to the Mill Creek community that the regulatory agencies can attempt to change the ESA rules to take/kill Mill Creek's threaten population of wild spring-run Chinook salmon.

Two years ago several members of the Mill Creek Conservancy spoke at the public forum regarding this issue and the MCC also provided a detailed comment letter that is attached. It is truly distressing to the MCC that during the past two years these comments were not incorporated into the appropriate measures for the “restoration project” or the Program Environmental Impact Statement/Report (PEISR). How can this be a restoration project if it degrades and further threatens the population of wild Mill Creek spring-run Chinook salmon? When did the Federal and State government agencies cease to be our partner in protecting the wild Mill Creek spring-run Chinook salmon and now become a threat by taking Mill Creek natal fish from their required habitat?

MCC’s position on the many facets of the San Joaquin River Restoration Project SJRRP remains unchanged from two years ago and our main points are:

Response #53 Due to the current high risk of extinction, Mill Creek spring-run stock should be removed from consideration in the All Donor Stock Sources Alternative in establishing the SJR experimental population.

Response #54 The DEA needs to reference wild spring-run Chinook salmon levels and recovery rates that warrant reclassifying the wild spring-run populations on Mill Creek as stable with a low risk of extinction.

Response #55 Once habitat conditions in the SJR are restored and scientifically proven capable of sustaining populations of spring-run Chinook salmon, then and only then reassess whether wild or hatchery broodstock spring- and fall-run salmon are the appropriate genetic source for SJR.

Once wild spring-run populations increase on Mill Creek to Central Valley Project Improvement Act CVPIA target levels, and are stabilized over a 12 year cycle on Mill Creek , and the habitat in the SJR is evaluated by an independent qualified authority as able to support Mill Creek genetic stock, then involve the local stakeholders to participate in the Section 10(a)(1)(A) permitting process including stock selection and collection.

Proceed with the SJRRP projects to improve habitat, flows and water management.

Then assess if it is appropriate to introduced surplus Central Valley hatchery fall-run and local spring-run Chinook salmon to the SJRRP restored habitat.

Study and monitor the volitional recolonization of wild spring-run Chinook salmon for at least 12 years as a superior alternative to taking wild Mill Creek spring-run Chinook salmon.

The SJRRP project needs to make the Water Management Goals the first priority of the project. Water Management and Habitat Restoration must be accomplished prior to broodstock collection and fish introduction. If adequate habitat conditions exist then the fish will come on their own.

The element of this project that removes Wild Mill Creek spring-run Chinook salmon from natal high elevation mountain habitat to the almost certainly fatal warm valley floor water of a “restored” San Joaquin River will not “further the conservation” of the listed species. **As stated in the Federal Register “Reintroduction efforts have the best chance for success when the donor population has life history characteristics compatible with the anticipated environmental conditions of the habitat into which fish will be introduced.”**

The National Marine Fisheries Service (NMFS) responsibilities as discussed in section 1.21 of the DEA need to be expanded to address their responsibilities to the wild Mill Creek spring-run Chinook salmon currently afforded by the Endangered Species Act ESA. The proposed legal loophole to change the ESA rule does not protect the wild Mill Creek spring-run salmon and the SJRRP needs to be amended to omit use of Wild Mill Creek spring-run Chinook salmon.

The Federal Register indicates that “The Deer and Mill Creek population levels are at a high risk of extinction and special care and consideration will be used when considering these fish as a donor source for reintroduction into the San Joaquin River.” This is cold comfort to the people that do care about the Mill Creek Spring-run Salmon. What are the parameters of “special care and consideration” mentioned in the Federal Register and the DEA? We need criteria, vetted target population numbers, independent monitoring of fish and consequences for non-adherence to the rules.

The Federal Register depiction of this project and the DEA contradict each other. The Federal Register places wild-spring run populations at a high rate of extinction and the DEA lists these stocks as a preferred alternative. The DEA gives no specifics regarding when, where, how or under what conditions wild Mill Creek spring-run Chinook salmon will be utilized. The DEA is totally inadequate in its discussion of the required habitat conditions and the life cycle of the wild Mill Creek spring-run Chinook salmon. Quantifiable parameters must be set and agreed upon and adhered to by an independent technical review team with input from local stakeholders before any fish are taken from Mill Creek.

The Federal Register, the DEA and the public meetings have indicated that only a narrow focus of comments are sought for this project. This attempt to limit the scope of the comments appears to indicate that the responsible Federal agency wants to restrict their responsibility in considering all the impacts from this project. This is unacceptable since the DEA fails to address the significant adverse impacts to the existing wild Mill Creek spring-run Chinook salmon. The project is not justified to only improve SJR, it must not harm other watersheds and threaten the wild Mill Creek spring-run Chinook salmon population.

Why are the San Joaquin water users as third party to this project protected? Why are the fish and the people of Mill Creek not protected from the adverse impacts of this project? The Mill Creek Conservancy and the people of Tehama County are stakeholders in the health and safety of our wild Mill Creek spring-run Chinook salmon and we need to be included on any decisions that are made regarding these fish. When adult spring-run are migrating into Mill Creek, Mill Creek water users make sacrifices to ensure there is sufficient bypassed irrigation water for adult fish to have adequate passage water to their holding grounds. The Mill Creek Water Exchange Agreement provides local biologists the authority to call for additional irrigations water flows for salmon migration flows. Mill Creek water users forgo irrigation obligations and bypass water back to the creek. These “Chinook Flows”, impact operations of the Los Molinos Mutual Water Company and water deliveries for local shareholders. It is not appropriate for the Federal government to propose to relocate these wild fish, label them as “nonessential” and use them for experimental purposes on the San Joaquin River which does not meet the habitat requirements of these fish. This restoration project benefits the San Joaquin water users while unfairly adversely impacting all residents (people and salmon) in Mill Creek. The proponents of the SJRRP including the San Joaquin biologists and water users will be exempted from endangered species take prohibitions without consideration of the deleterious harmful impacts to the wild Mill Creek spring-run Chinook salmon. Given your record of not

including our past letters on this matter in the public record it is essential that adequate mitigation measures are incorporated into the SJRRP to ensure that our concerns are addressed.

The DEA has purposely not considered volitional re-establishment of fish population. **This is a critical defect in the DEA and any approach to create a credible project.** Salmon researchers have a unique opportunity to study salmon response to a restored environment: start with a dry river bed, add water, stir in some gravel, plant trees, chill for a few years and allow the restoration work to become established, and then MEASURE the environmental response...see what spring-running genome recolonizes this new habitat. The SJRRP proposes to prematurely introduce Mill Creek fish with known inherited traits, adapted to an environ hundreds of miles to the north and a mile high in elevation. This approach could have lasting negative impacts that have not been addressed in the environmental documents for this project. Mill Creek fish could volitionally stray into this restored habitat rather than being "placed" in SJR. In that case the straying will be based on environmental cues of their choosing, not a geneticists forced conformity. Nature can heal and help itself if correct environmental conditions exist in the SJR. The volitional recolonization alternative must be included in any reports for this project. You can't get a quick fix on a problem that the water users and the government agencies created when the Friant Dam was built.

After restoration, the SJR below Friant Dam may be adequate spawning and rearing habitat for Fall-run Chinook salmon, however there is no evidence or requirement in the DEA that the condition of the SJR below Friant Dam meet the habitat requirements of wild Spring Run Chinook Salmon. In addition, the DEA fails to address how spatial and temporal isolation between these two runs will be assured, in perpetuity. In Mill Creek, isolation between these two runs is maintained by distance and time of spawning. Central Valley rivers with terminal dams no longer maintain a separation in spawn timing. Both fall and spring running fish ascend to the base of these dams and spawn simultaneously. In order for wild Mill Creek salmon to maintain their genetic fitness, biologists need to manage for stock separation, not stock integration. Let the wild spring Chinook stay in their natal watersheds rather than transporting them to a river system to be integrated with fall Chinook. Man altered the condition of SJR with the Friant Dam and it blocks the previous habitat of the spring run Chinook Salmon. This project only serves to have federally paid and protected biologists send Spring run Chinook Salmon to their sure death. How can you proceed with a project that will truly fail and only serve to kill fish that must have adequate habitat, water conditions and separation from fall run to survive?

The Mill Creek Conservancy submitted a 7-page letter to you and to Ronda Reed of NMFS on February 4, 2011. None of those substantial comments on our opposition to the SJRRP were included in the PEISR document on this project. It is unconscionable that public agencies would thwart the honest efforts of an impacted watershed community to protect the interests of the salmon that hold over, spawn and rear in the higher elevations of Mill Creek. **The MCC 2011 letter is attached and needs to be part of the record going forward. None of the valid concerns of the MCC expressed in this letter were included in any of these costly documents on the SJRRP prepared with tax payers dollars.** Also the request for addressing all of MCC concerns was raised again in the 3-7-2011 letter, however no response was received to any of our legitimate expressed concerns and apprehensions to this project.

The MCC objects to the wild Mill Creek spring-run Chinook salmon being designated as a non-essential population. **The arbitrary designation of Mill Creek spring-run Chinook as a nonessential population is totally contrary to the 20 years of conservation efforts of agencies, the Mill Creek Conservancy, The Nature Conservancy, the Los Molinos Mutual Water Company and numerous individual stakeholders in the watershed.**

The Mill Creek Conservancy demands that this project be amended and improved to create total protection of the wild Mill Creek spring-run Chinook salmon. It is unacceptable to utilize wild Mill Creek spring-run Chinook salmon when we have been working with United States Fish and Wildlife Services (USFWS's) Anadromous Fish Restoration Program (AFRP) to meet the objectives of the Central Valley Project Improvement Act's (CVPIA) doubling plan. Why does the DEA not mention this? Mill Creek needs to meet the target population of 4,400 returning adults before any consideration of using the wild Mill Creek spring-run Chinook salmon can be made. The CVPIA's goal of doubling the natural production of anadromous fish on Mill Creek has not been met. In fact, current population levels of wild spring-run Chinook salmon in Mill Creek are 44% below the baseline period. The baseline period population for spring-run Chinook in Mill Creek is 2,202 fish. The natural production during the doubling period was only 1,235 fish, and the target population for Mill Creek is 4,400 spring-run Chinook salmon. This means that current populations are 72% below the target goal. How can the DEA propose that even a single wild Mill Creek spring-run Chinook be removed from its natal stream, re-classified as "non-essential" and experimentally be used in a way that exempts them from take prohibitions?

To date, over \$1 million public dollars have been spent thru the AFRP on Mill Creek to enhance salmon populations and meet this doubling goal. Also there has been nearly \$ 1 million dollars spent from other sources on salmon habitat restoration. AFRP projects a total cost of \$5 million public dollars to "fix" Mill Creek. AFRP funded projects such as stream flow gauges, thermographs, water quality monitoring, riparian restorations projects, riparian easements and geomorphology assessments, and fish ladder improvements were designed to address limiting factors contributing to low salmon returns in Mill Creek. It's working. These projects are contributing to improved Mill Creek salmon populations. So, why is one Federal Agency willing to spend up to 5 million dollars of the public's money to enhance fish populations, and another Federal Agency willing to label them as "non-essential" and relocate them to habitat where they can't survive?

The SJRRP has not used the best science available in making this determination. You must consider the appropriate actions that will not harm any of the existing wild stocks that currently have extremely low population numbers. You need to be patient and let nature determine which fish can survive in lower SJR. You could place Mill Creek fish there, but when they die without spawning, you have just reduced the number of Wild Mill Creek spring-run Chinook salmon

The Mill Creek Conservancy represents the wild spring-run Chinook in Mill Creek. What recourse do we have against a project that fails to document the significant potential harm to the at risk population of Mill Creek fish?

Which agency will be responsible and accountable for the adverse impacts to the wild Mill Creek spring-run Chinook salmon? Is it USFWS, NOAA, NMFS or the Bureau of Reclamation?

Under NEPA and CEQA, you need to incorporate all necessary mitigation measures prior to the taking of the fish. The Mill Creek Conservancy respectfully requests the following Mitigation Measures to ensure no harm to the Wild Mill Creek spring-run Chinook salmon:

1. Mill Creek Conservancy members and other Tehama County stakeholders need to be included on all actions that impact the Wild Mill Creek spring-run Chinook salmon.

Response
#56

Response
#57

2. The SJRRP must have peer review with at least 3 independent biologists and scientist that are regarded as experts on the Wild Mill Creek spring-run Chinook salmon to protect the interests of these fish.

Response
#58

3. A comprehensive EIS/EIR document is required to assess the full adverse impacts to the wild Mill Creek spring-run Chinook salmon populations before any decisions can be made to take them from their native habitat. None of the documents on the SJRRP to date have addressed the adverse impacts to the wild Mill Creek spring-run Chinook salmon.

Response
#59

4. No wild Mill Creek spring-run Chinook salmon can be utilized for the SJR until SJR conditions match that of the Mill Creek fish including spawning elevation, water temperature, quality of riparian habitat, miles of spawning habitat and habitat remoteness.

Response
#60

5. No wild Mill Creek spring-run Chinook salmon can be utilized for the SJRRP until the wild Mill Creek spring-run Chinook salmon have exceeded the AFRP goal of doubling the wild Mill Creek spring-run Chinook salmon population to 4,400 fish for 12 continuous years.

Response
#61

6. If condition # 5 above is met, the Mill Creek Conservancy requires notice to the issuance of permits under Section 10(a) (1) (A) of the ESA regarding the collection of the Wild Mill Creek spring-run Chinook salmon in order to provide our input.

Comments of Draft Environmental Assessment for Nonessential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam

Response
#62

Page 1-3, line 11 – 15

How do you proposed to meet the SJRRP restoration goal while protecting the water contracts?

Response
#63

Page 1-3, line 31-35

The likelihood of successful introduction of Wild Mill Creek spring-run Chinook salmon is non-existent given the habitat requirements for spawning per Figure 1-1. This graphic does not accurately represent the elevations that are required for Mill Creek salmon.

Response
#64

Page 1-7, lines 15- 28

What is the status of the channel and structural modifications and habitat improvements below the Friant Dam? What is the schedule for additional water releases? What is the time schedule for all of these noted improvements? They need to precede any introduction of fish.

Response
#65

Page 1-10, lines 19-21

Wild Mill Creek spring-run Chinook salmon can only be taken without “jeopardizing the already threatened population” when there are excess fish above the 4,400 population level set by the AFRP. The SJRR could only safely “take” Wild Mill Creek spring-run Chinook salmon above that target number.

Response
#66

Page 1-10 – Description of the Action Area, Study Area, and Restoration Area and Figure 1-2

The Action Area should eliminate Mill Creek since the salmon population has not met the AFRP target population numbers.

Response #67

Page 1-12, lines 1 – 3
The SJFFP PEIS/R is deficient since it did not describe or analyze the adverse impacts to the Mill Creek watershed and the distinct Wild Mill Creek spring-run Chinook salmon population.

Response #68

Figure 1-4 San Joaquin River Restoration Area
This map should show the river elevations since that is a critical component of the Spring-run Chinook Salmon habitat.

Response #69

Page 1-15, lines 1 – 19
Where there any biologist representing Wild Mill Creek spring-run Chinook salmon present at the November 1, 2011 Technical Feedback Group Meeting? We were not represented in this matter.

Response #70

Page 2-1, lines 25-29
This project is more concerned about protecting the water users than protecting Mill Creek Salmon.

Response #71

Page 2-2, lines 3-6
Stanislaus and Tuolumne river salmon are the most appropriate fish to reintroduce to the SJR. Introducing (stealing) Mill Creek salmon to meet an arbitrary deadline and population number is bad science and harmful to Mill Creek’s threatened population.

Response #72

Page 2-2, lines 13-23
The SJR to the Friant Dam is fall run habitat. Why try to introduce spring run when this stretch of river is not suitable habitat and will result in inbreeding between the two runs?

Response #73

Page 2-3, line 9
Amend the settlement to exclude Spring Run Chinook Salmon

Response #74

Page 2-3, lines 25-27
Mill Creek is a third party to this project and will be harmed by the taking of our threatened fish.

Response #75

Page 2-4, lines 27-28
Is it equitable that SJR water users are exempt from take provisions but take is a prohibited activity on Mill Creek?

Response #76

Page 2-5, line 7
Why consider and list Deer and Mill Creek fish first?

Response #77

Page 2-5 lines 27 -36
Mill Creek spring-run do not meet a majority of these criteria. Mill Creek spring-run Chinook are not local or regional origin to SJR. Their habitat is the upper reaches of Mill Creek where they are born, stay for a year, migrate out as quickly through the Sacramento River to spend approximately 2 years in the ocean and then quickly return to hold over on the upper reaches of Mill Creek to spawn. They only travel through the Central Valley – it is not their origin.

The wild Mill Creek spring-run Chinook salmon life history evolved at higher elevation in spring-fed, snow melt water. The wild Mill Creek spring-run salmon currently do not have adequate population

size to support any taking of fish, nor have they ever had sufficient population numbers since they have been counted per Table 3-3 in the DEA. **Table 3-3 clearly indicates that wild Mill Creek spring-run Chinook salmon should not UNDER ANY CIRCUMSTANCES be considered as candidate for use as part of the SJRRP until the population levels reach the required 4,440 for at least 12 years.**

Response
#77

Response
#78

Page 2-6, lines 21-22

Why not list FRFH as the best candidate since their use will have “no effect on the population or the ESU”? Do no harm to other populations.

Response
#79

Page 2-11

When will Mill Creek Salmon be safe for the duration of this project?

Response
#80

Page 2-14

Why were only 2 duration periods analyzed? That is not adequate to address our valid concerns.

Response
#81

Page 3-1, lines 5 -6

The Federal Register indicates that special care and consideration will be utilized with the Mill Creek Salmon, however in the EA, it continues to list the Mill Creek fish prior to Butte Creek and Feather River salmon.

Response
#82

Page 3-1, lines 28-31

How is SJR below Friant Dam consistent with the habitat and life cycle described here for Wild Mill Creek spring-run Chinook salmon?

Response
#83

Page 3-2, lines 9-10

Why would you threaten the last wild populations of spring-run Chinook salmon by forcing them into a foreign and unsuitable river channel below the Friant Dam?

Response
#84

Page 3-3, lines 4-6

This section states that Mill Creek population is in the “high extinction risk category due to the rate of decline”. That statement should disqualify Mill Creek Salmon from the SJRR project

Response
#85

Page 3-8, line 11

There are two small water diversions on Mill Creek. **These are not dams!** Please correct this misstatement. The Clough diversion was destroyed in the 1997 flood and there is a siphon at that location. These errors make the validity of the whole report suspect. The attached U. S. Fish and Wildlife information sheets states 0 acrefeet of water storage, further evidence of no dams on Mill Creek.

Response
#86

Figure 3-4

Please change to reflect correct status – Ward diversion and Upper diversion to make this report reflect the true condition of Mill Creek.

Response
#87

Table 3-3

This data clearly shows that there are not adequate population levels or an appropriate population trend to allow any take of Mill Creek Salmon.

Response #88

Page 3-14
This section does not discuss the Coleman Hatchery Management Plan.

Response #89

Page 3-15 San Joaquin River Tributaries. Line 9-11
San Joaquin Rivers do not have adequate habitat to support Spring – run Chinook Salmon as stated in this section. Why steal/take Mill Creek salmon that require the cold spring-fed water that occurs in higher elevation, and isolation from hatchery fall Chinook that spawn at similar times? The SJRRP is going through an exercise to meet a settlement that will kill Mill Creek Salmon.

Response #90

Page 3-16, line 4
What adult spring-run Chinook holding opportunities exist below Friant Dam that will support Mill Creek spring-run salmon?

Response #91

Page 3-16, line 23-24
Why should Mill Creek sacrifice our fish for SJRRP and a dam system that does not benefit wild Mill Creek spring-run Chinook salmon?

Response #92

Table 3-7 and Table 3-8
You need to take a hard look at these tables and determine if spring-run salmon can survive in SJR below the Friant Dam.

Response #93

Page 3-37 Water Quality
The SJR needs to duplicate the water quality of the upper reaches of Mill Creek prior to any take

Response #94

Page 3-38 Water Temperature
The SJR needs to duplicate the water temperature of the upper reaches of Mill Creek prior to any take.

Response #95

Page 3-38 Suspended Sediment and Turbidity
The SJR needs to duplicate the suspended sediment and turbidity of the upper reaches of Mill Creek prior to any take.

Response #96

Page 3-39, line 27-29
The upper reaches of the holding habitat of Mill Creek are much cooler and has shaded riparian habitat with numerous volcanic formations that create springs with cold pure water throughout the summer and fall months that do not exist in the SJR or the Sacramento Valley.

Response #97

Page 4-1, lines 6-9
The SJRR will not have any success on any level (except spending public tax dollars) without changes to water flows and infrastructure.

Response #98

Page 4-1 – Section 4.2 No Action
Mill Creek Conservancy supports channel and habitat improvements and no collection of wild Mill Creek salmon.

Response #99

Page 4-6, lines 16-17
What additional evaluation will be required for the collection of Mill Creek salmon? Why is this not included in the DEA? The MCC requests to be informed of any and all actions pursuant to NEPA, ESA and CEQA.

Response #100

4-6, lines 37-38
MCC wants to be notified on the NMFS special rule changes.

Response #101

4-7, lines 20-28
Congress should be notified each year about the impacts/results of this project and the annual costs. The proposed reporting requirement does not prevent impacts to fish as stated in this section.

Response #102

4-8 Hybridization
There is not adequate science information in the DEA that addresses the hybridization risk to Wild Mill Creek spring-run Chinook salmon.

Response #103

4-14 Donor Stock Alternatives Analysis
There is not adequate data in the DEA regarding impacts to Donor Stock.

SJRRP specific questions -

These questions are too narrow in scope to adequately determine adverse impacts to **wild Mill Creek spring-run Chinook salmon. We request that you take the totality of all the comments contained in this and past letters referenced in the attachments. Use of only the response to these restricted issues would not be in the best interest of a fair and comprehensive analysis of the adverse impacts of the SJRRP to the wild Mill Creek spring-run Chinook salmon.**

Response #104

(1) The geographical boundary of the designated experimental population
MCC response: not directly applicable to Mill Creek

Response #105

(2) The extent to which the experimental population would be affected by current or future Federal, State or private actions within or adjacent to the experimental population area.
MCC response: not directly applicable to Mill Creek

Response #106

(3) Any necessary management restrictions, protective measures that we may not have considered.
MCC response: Revise project to include and utilize volitional reintroduction to SJR.

Response #107

(4) The extent to which we have provided protections for third parties as required by the SJRRSA.
MCC response: SJRRP has provide NO protection for the Mill Creek Spring-run Chinook salmon or the Mill Creek Conservancy, Los Molinos Mutual Water Company and local stakeholders that have spent 20 years of volunteer efforts to promote salmon population on Mill Creek. In addition the Los Molinos Mutual Water Company and shareholders have voluntarily bypassed irrigation water for the benefit of migrating salmon.

Response #108

(5) Whether we should propose the experimental population as nonessential.
MCC response: MCC opposes the use of Wild Mill Creek spring-run Chinook salmon for experimental purposes and the designating Mill Creek descendants as nonessential. This is a protected species in Mill Creek and these fish deserve protection under the current ESA.

Response #109

(6) Whether the proposed designation furthers the conservation of the species and we have used the best available science in making this determination.
MCC response: The SJRRP has the potential to adversely impact Mill Creek Spring-run Chinook salmon by utilizing any fish before the AFRP target numbers are met in Mill Creek. Also, as a species, Mill Creek fish cannot survive in the proposed habitat of the San Joaquin

and the threat of hybridization with fall Chinook. Hybridization will degrade the conservation of wild stream-type spring-run Chinook salmon

The SJRRP only serves the interest of SJR and their water users. It does not protect or promote the interest of the Wild Mill Creek spring-run Chinook salmon. This project is a misuse of government funds since it utilizes public money to export wild Mill Creek spring-run Chinook salmon to a river environment that will not support them. The use of Mill Creek Spring –run Chinook salmon was not an intended out come of the initial lawsuit and our salmon should not be the solution to the problem that the SJR water users created.

The Mill Creek Conservancy has worked for twenty years to promote the integrity of our watershed including substantial work on protecting the wild Mill Creek spring-run Chinook salmon. It is unfortunate that the MCC Board of Directors and members of the MCC find themselves spending numerous hours on “defense” against the SJRRP’s ill-advised use of wild Mill Creek spring-run Chinook salmon rather than the more rewarding “offensive efforts” of volunteer activities that benefit Mill Creek. The positive MCC projects that benefit wild Mill Creek spring-run Chinook salmon include but are not limited to:

- Creation of the Mill Creek Watershed Management Strategy Report in collaboration
 - With landowners, agencies and stakeholders
- Numerous re-vegetation projects with Los Molinos school children,
- Promoting the establishment of numerous Conservation Easements on Mill Creek with
 - The Nature Conservancy,
- Supporting Los Molinos Mutual Water Company’s Water Exchange agreements to provide spring flows for the spring-run Chinook,
- Allowing and seeking access for Fish and Wildlife and other agencies on private lands
 - for conservation efforts consistent with the MCC Mission Statement
- Seeking grants from USFWS to remove fish passage impediments in Mill Creek
- Encouraging riparian fencing along Mill Creek
- Spearheading and sponsoring the reduction and removal of the feral cattle population from
 - Mill Creek that damages habitat critical to spawning spring-run Chinook salmon
- Assisting with the annual monitoring/granting of access for spring-run Chinook spawning surveys
- Allowing water quality and temperature monitoring on private property in Mill Creek
- Endorsing the road reduction programs for Lassen National Forest

It is regrettable that a restoration project for San Joaquin River needs to involve a very selective species of fish from Mill Creek, Tehama County with very specific habitat requirements. Please carefully consider the devastating harm of seizing spring-run Chinook from Mill Creek when their population requires the continued efforts mentioned above. If the regulatory agencies seize Mill Creek fish for a flawed project that adversely impacts Wild Mill Creek spring-run Chinook salmon for an almost fatal fate before they are able to spawn in the SJR, how many future volunteer hours do you think the MCC can attract? Has all the MCC work been for naught if the regulatory agencies can TAKE the Wild Mill Creek spring-run Chinook salmon from their natal stream? If you capture and use the Mill Creek fish against the will of the local providers and guardians of healthy wild Mill Creek spring-run Chinook salmon, then you have robbed the future and the drive to continue our good works on behalf of the salmon. That is too high of a price to pay to meet the terms of the a settlement that did not consider the impacts to Wild Mill Creek spring-run Chinook salmon nor the people that do their level best for their survival.

MCC and the wild Mill Creek spring-run Chinook salmon are not a third-party to the SJRRP and we have earned the right to speak for the natal Mill Creek fish that want to be NO part or party to this project. The proponents of this project need to amend their proposed actions to eliminate any use of wild Mill Creek spring-run Chinook salmon. We have worked too hard for their benefit in their natal habitat to have them removed and sent to an unsuitable habitat.

Sincerely,

Burt Bundy, President MCC

Attachments:

MCC letter dated 2-5-2013

Kerry B. Hanna letter dated 3-7-2011

MCC letter dated 2-14-2011

MCC brochure

U.S. Fish and Wildlife 3-28-2011 information on \$ 2 Million dollars of restoration projects in
Mill Creek

CC: Natural Resources Defense Council
Los Molinos Mutual Water Company
Tehama County Board of Supervisors
The Nature Conservancy
Tehama County Fish and Game Commission
California Fish and Wildlife
California Trout Unlimited
Chico Enterprise News
Red Bluff Daily News
Redding Searchlight
Sacramento Bee
San Francisco Chronicle

Mr. & Mrs. Gary Martin
P.O. Box 686, Firebaugh CA 93622

March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"***

Dear Ms. Reed:

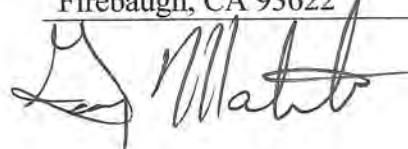
As a landowner (and/or farmer) along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Response
#110

Sincerely yours,

Name: Mr & Mrs Gary Martin
Address: 2155 E Cardella
P.O. Box 686
City, State Zip: Firebaugh, CA 93622



THOMAS M. BERLINER
DIRECT DIAL: 415-957-3333
PERSONAL FAX: +1 415 520 5835
E-MAIL: tmberliner@duanemorris.com

www.duanemorris.com

March 4, 2013

VIA E-MAIL

Ms. Elif Fehm-Sullivan, Fisheries Biologist
Protected Resources Division, Southwest Region
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

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PITTSBURGH
NEWARK
LAS VEGAS
CHERRY HILL
BOCA RATON
LAKE TAHOE

MEXICO CITY
ALLIANCE WITH
MIRANDA & ESTAVILLO

Re: Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition on Proposed Rule for Introduction of a Nonessential Experimental Population of Spring-Run Chinook Salmon in the San Joaquin River Pursuant to Section 10(i) of the ESA and Related Incidental Take Protection Pursuant to Section 4(d) of the ESA, NOAA-NMFS-2012-0221

Dear Ms. Fehm-Sullivan:

The San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition (referred to hereafter collectively for convenience as "Exchange Contractors") appreciate the opportunity to submit comments on the proposed rule for introduction of an experimental population of spring-run Chinook salmon to the upper San Joaquin River as part of the San Joaquin River Restoration Program (SJRRP) and the accompanying incidental take protection.

The Exchange Contractors are very appreciative of the outreach that has been conducted by NMFS regarding the proposed rule and other issues associated with the reintroduction of spring run Chinook salmon to the upper San Joaquin River. In particular, Ms. Rhonda Reed has met with the Exchange Contractors on numerous occasions. In the course of those meetings, Ms. Reed has requested comments on both the substance of the proposed rule and the format of the rule. Accordingly, the Exchange Contractors will comment on both form and substance.

Ms. Elif Fehm-Sullivan
March 4, 2013
Page 2

Drafting concerns

D.1. The summary should state that take exemptions include take in the upper San Joaquin River as well as the tributaries and the Delta. Further, while all lawful activities are exempted from take, in keeping with prior practice, examples of some particular activities exempted from take should be set forth.

Response
#111

D.2. Under the section "Statutory and Regulatory Framework for Experimental Population Design" it is stated that in order to comply with section 10011(c), NMFS considered any additional measures appropriate to address management concerns under local conditions, a process for data collection and periodic review of the status of the experimental population. It is unclear as to what provisions in section 10011(c) require these considerations. Section 10011(c) concerns protections for third parties. NMFS should explain how the foregoing considerations are relevant to protections for third parties.

Response
#112

D.3. Under the same section as referenced in D.2. The draft states that California Fish and Game Code section 1600, *et seq.* will help ensure the establishment and survival of the experimental population by protecting aquatic and riparian habitat. The draft states that Section 1600 *et seq.* requires that the Department of Fish and Wildlife be notified before anyone substantially diverts the natural flow of a river or stream. NMFS should explain the legal basis for contending that Section 1600 *et seq.* requires notification before someone substantially diverts the natural flow of a river or stream. In a recent court decision the Superior Court of California found that the Department of Fish and Wildlife did not have authority to restrict diversions under Section 1600 *et seq.* (*Siskiyou County Farm Bureau v. California Department of Fish and Game*, Case No. SC CV 11-00418, Siskiyou County Superior Court.) Rather, the court found that Section 1600 *et seq.* regulated physical alterations to the river bed and banks, but not simply water diversion.

Response
#113

D.4. The section entitled "Additional Management Restrictions, Protective Measures, and Other Special Management Considerations" should start with a summary that identifies how the 4(d) rule will be applied and which activities it covers.

Response
#114

D.5. Under the section entitled "Process for Periodic Review" the draft states that "while this monitoring is being conducted for purposes of making the reintroduction effort successful, we will use the information to also to determine if the experimental population designation is causing any harm to CV spring-run Chinook salmon that are part of the threatened ESU and their habitat, and then, based on this and other available information, determine if any changes to the experimental population designation may be warranted." Is this a reference to Sacramento-based spring-run? If so, the draft should be clarified to make this explicit.

Response
#115

D. 6. The amendment to the special rules for marine and anadromous species should be summarized at the beginning of the draft rule so that the reader knows what activities are

Response
#116

Ms. Elif Fehm-Sullivan
March 4, 2013
Page 3

covered, and the geographic areas that are covered. The reader should not have to wait until the very last two pages of the rule to find out specifically what is or is not covered.

Response
#116

Substantive concerns

S.1. Under the section "Background Information Relevant to Experimental Population Designation" it should be stated that the proposed experimental population will occur in the San Joaquin River upstream of the confluence with the Merced River, etc. as well as the tributaries to the San Joaquin River from the Merced River on downstream. The tributaries are outside of the current range of the CV spring-run Chinook salmon ESU.

Response
#117

S.2. Under the same section as S.1., the draft states that NMFS' recovery plan for CV salmon characterizes the San Joaquin River basin below Friant Dam as having a high potential to support a spawning population of reintroduced salmon "with implementation of the San Joaquin River Restoration Program (SJRRP)." The SJRRP includes channel and structural modifications to the San Joaquin River. The draft rule does not state whether failure to develop all or only part of the channel and structural modifications "will create habitat conditions... sufficient to support the establishment of CV spring-run Chinook salmon populations."

Response
#118

Pursuant to the Record of Decision (ROD) issued by the Bureau of Reclamation, if there are insufficient funds to develop the entire plan as set forth in the "Framework for Implementation", Reclamation will rely on a contingency plan as explained in section 6.2 of the ROD. This plan will prioritize certain actions. Consistent with the types of actions to be prioritized, the Exchange Contractors recommend that the projects that should be prioritized to assure successful passage of salmonids are the improvements to Sack Dam and installation of a fish screen in the Arroyo Canal, and a bypass around Mendota Dam and the installation of a fish screen for flows into the Mendota Pool. Presumably, NMFS is also aware of the subsidence problem near Sack Dam that is affecting flow in the San Joaquin River and nearby flood control system. The effects of subsidence must also be addressed when considering the likelihood of success of the 10(j) population.

S.3. Under the same section as S.1., the draft states that programs for strategic screening and participation in habitat conservation programs will be implemented in conjunction with SJRRP activities. What types of diversions will be screened? Will diversions below 300 CFS be screened? If flows below 300 CFS are not required to be screened, they must still be covered by the 4(d) rule such that incidental take is permitted. Will all diversions above 300 CFS be screened? Are there specific locations that NMFS has identified to be screened on a priority basis?

Response #
119

S.4. Under the section "Identification of the Experimental Population", it states that the SJRRP includes actions to prevent or reduce straying to false pathways. What actions are assumed to be taken that will reduce straying to false pathways? In 2011, due to flood operations, fall-run salmon successfully migrated upstream of the Hills Ferry Barrier and over 70 salmon

Response
205

Ms. Elif Fehm-Sullivan
March 4, 2013
Page 4

perished in the Eastside Bypass. The Department of Fish and Wildlife did not have any measures in place to prevent straying once salmon migrated past the Hills Ferry Barrier.

S.5. The section entitled "Additional Management Restrictions, Protective Measures, and Other Special Management Considerations" states that take prohibitions would apply to the experimental population that has an intact adipose fin "as well as those that are adipose fin-clipped." It is our understanding that an agreement was reached with Reclamation and the U.S. Fish and Wildlife Service that adipose fin-clipped salmon in the experimental population area would not be subject to take prohibitions under the 4(d) rule currently in place for Sacramento spring-run Chinook salmon. This provision should stay in place until such time as adipose fin-clipped fish from the Feather River Fish Hatchery or any other facility will no longer be introduced into the San Joaquin River system.

Response
#121

S.6. Under the section entitled "Public Comment" NMFS requests feedback on six specific questions. The Exchange Contractors have attempted to address each of those areas in the above comments. However, we will also provide brief responses to each of the questions below.

(1) ***The geographic boundary of the designated experimental population.*** The geographical boundary should include the San Joaquin River upstream of the confluence with the Merced River, the Kings River and tributaries to the San Joaquin River from the Merced River downstream.

Response #
206

(2) ***The extent to which the experimental population would be affected by current or future federal, state, or private actions within or adjacent to the experimental population area.*** The experimental population will be affected by agricultural and water diversion activities, among others. These normal and lawful activities must be exempted from take prohibitions. Water diversion activities include, among others, the operation, maintenance, repair and replacement of water diversion structures including dams, intakes, pumps, canals, pipes, etc. some of these activities will occur in the San Joaquin River.

Response
#190

(3) ***Any necessary management restrictions, protective measures, or other management measures that we may not have considered.*** Exemption from take will cover all lawful activities. The rule should provide examples of protected activities, including diverting or receiving water, water spreading (such as to address the subsidence problems east of Sack Dam), and flood control activities.

Response
#125

(4) ***The extent to which we have provided protections for third parties as required by the SJRRSA.*** NMFS should address specifically how it will treat unscreened diversions on the San Joaquin River above the confluence with the Merced River as well as in false pathways, including irrigation canals and flood control channels. Examples of otherwise lawful activities that will be included under Section 223.301(B) should include activities related to diverting or receiving water including operation, maintenance, repair, and replacement of water diversion

Response
#126

Ms. Elif Fehm-Sullivan
March 4, 2013
Page 5

structures including dams, intakes, pumps, canals, pipes, etc. as well as flood control operations and spreading to address subsidence problems since the latter is related to water supply.

Response #126

As NMFS is aware, there are a number of water diversion facilities located along the San Joaquin River in the restoration area. The member agencies of the Exchange Contractors operate a number of facilities, including the above-mentioned dams, intakes, pumps, canals, pipes, etc. The member agencies include the Columbia Canal Company, Central California Irrigation District, Firebaugh Canal Water District, and San Luis Canal Company. In the recently adopted 4(d) rule for the Deschutes watershed (78 Fed. Reg. 2893), take of Middle Columbia River steelhead was permitted "incidental to any activities related to or associated with the operation and maintenance of the Opal Springs Hydroelectric Project..." The facilities of the member agencies are not so precisely identified. However, it is necessary that all facilities operated by these member agencies for water diversion and water management purposes be exempted from take.

Response # 207

NMFS has appropriately made clear it is attempting to develop a rule that will not have more than a *de minimis* water supply impact on third parties. NMFS must also ensure that no costs will be imposed on third parties that are not voluntarily incurred. (San Joaquin River Restoration Settlement Act, Sec. 10009(a)(3).)

(5) Whether we should propose the experimental population as nonessential. Yes. According to the draft rule, the nonessential population designation will be reviewed every five years. If the spring-run are re-categorized as an essential population, the provisions of the San Joaquin River Restoration Settlement Act will still be applicable regarding the protections to third parties. If the San Joaquin spring-run Chinook salmon experimental population is re-categorized as an essential population, how will NMFS ensure there will be no impacts on the water, agricultural and flood control activities that should be exempted under this rule?

Response # 120

(6) Whether the proposed designation furthers the conservation of the species and we have used the best available science in making this determination. The designation will further the conservation of the species and will provide necessary agency flexibility in adaptively managing the fishery. However, the failure to consider the lack of funds, increased costs as identified in the Framework for Implementation, program delays, and the new subsidence condition (see Exchange Contractors' comments to Draft Environmental Assessment that accompanies this draft rule) do not constitute consideration of the best available science.

Response #124

In light of cost increases and funding deficiencies, NMFS should develop a reintroduction strategy that seeks to achieve reintroduction in light of the new financial reality. NMFS could design the strategy as a layered contingency plan with assumptions about different levels of funding. Starting at the \$500-600 million range, given that that's what's available, and building from there would make sense. The Restoration Settlement Act does not compromise NMFS' independent decision-making authority. It must still apply its independent

Response #123

Ms. Elif Fehm-Sullivan
March 4, 2013
Page 6

Duane Morris

judgment under the Endangered Species Act (“ESA”) as to how best to accomplish reintroduction. (See San Joaquin River Restoration Settlement Act § 10011; Stipulated Settlement ¶¶ 14 and 14(a).) NMFS is not required to follow the letter of the settlement, but may develop a strategy it views as consistent with its ESA obligations. The act makes it clear that the ESA is not amended and, therefore, NMFS has its own decision-making authority under sections 10(a) and 10(j).

In conclusion, the Exchange Contractors appreciate the efforts by NMFS to reach out to the affected third parties and to attempt to fashion rule that will have *de minimis* water supply impacts to third parties. Given the uncertainties associated with implementation of the SJRRP and the application of the 4(d) rule, including Delta take of SJR spring-run, an adaptive management approach appears warranted. The Exchange Contractors support the suggestion of the State Water Contractors that a process be developed to assess the amount of take in the Delta on SJR spring-run.

Thank you for this opportunity to comment.

Sincerely yours,



Thomas M. Berliner

TMB:dls

cc: San Joaquin River Exchange Contractors Water Authority
San Joaquin River Resource Management Coalition
San Joaquin Tributaries Authority
San Luis and Delta-Mendota Water Authority
Rhonda Reed - NMFS
Alicia Forsythe – USBR

DM2\4140913.1

Response
#123

Response
#122

ATTACHMENT

Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 “Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam”

THOMAS M. BERLINER
DIRECT DIAL: +1 415 957 3333
PERSONAL FAX: +1 415 520 5835
E-MAIL: tmberberliner@duanemorris.com

www.duanemorris.com

March 4, 2013

VIA EMAIL

Elif Fehm-Sullivan, Fisheries Biologist,
Protected Resources Division, Southwest Region,
National Marine Fisheries Service,
650 Capitol Mall, Suite 5-100,
Sacramento, California 95814.
Email: SJRspring.salmon@noaa.gov.

Rhonda Reed
Protected Resources Division
National Marine Fisheries Service
Central Valley Office
650 Capital Mall, Suite 5-100
Sacramento, CA 95814

Re: Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"

Dear Ms. Fehm-Sullivan and Ms. Reed:

The following comments to the Draft Environmental Assessment referenced above (DEA) are offered on behalf of the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition (referred to for convenience collectively as "Exchange Contractors"). By separate letter, the Exchange Contractors will comment on the proposed 4(d) take provisions and Section 10(j) designation of non-essential experimental population set forth in the proposed rule issued at 78 Fed. Reg. 3381 (January 16, 2013). For your convenience, a copy of that letter is appended hereto.

General Comments

1. Lack of Funding.

In comments to the Draft Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/R), the Exchange Contractors raised the concern that the Settling Parties, including the National Marine Fisheries Service (NMFS), have erroneously assumed that all necessary funding will be made available to fully implement the Settlement referred to in DEA Section 1.1.2. While perhaps historically there was some basis, however remote, that all of the funding necessary to fully implement the settlement would be forthcoming, based upon more recent information that understanding is no longer valid. This newly discovered information includes assurances from members of Congress that further federal funding will not be forthcoming as well as the substantial increase in costs of necessary expenditures identified by Reclamation in its Framework for Implementation. At the time the Settlement was presented to the United States Congress in support of the necessary implementing legislation, estimates of the cost of the San Joaquin River Restoration Program (SJRRP) ranged from \$250-800 million. In the Framework for Implementation, Reclamation has identified actions that are necessary in addition to those set forth in the Settlement to assure successful reintroduction of the San Joaquin spring-run Chinook salmon. Further, Reclamation has appropriately identified in the Record of Decision (ROD) at Section 6.2 that contingencies must be developed in the event that full funding is not available. The ROD provides that Reclamation will prepare each year an Annual Work Plan of projected SJRRP activities that "will be subject to revision to respond to changing conditions, including environmental, budgetary or otherwise." Moreover, "[c]onsistent with and in the process of fulfilling the requirements set forth in the Settlement and Act, and in consideration of available resources," the ROD also establishes a list of SJRRP activities that will be expedited over other activities.

NMFS is aware of the current level of funding available for the SJRRP, the fact that additional funding is not going to be available, that the SJRRP is currently underfunded based on original estimates, and that additional actions and costs that have been identified by Reclamation in the Framework for Implementation. In a situation such as this, where changed circumstances affect the factors relevant to the development and evaluation of alternatives, the agency "must account for such change in the alternatives it considers." (*Natural Resources Defense Council v. United States Forest Service*, 421 F.3d 797, 813 (9th Cir. 2005) [finding that error in interpreting report affected the economic and wildlife factors that the Forest Service used in developing and evaluating the alternatives considered]; *Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, at 730-731 ["While we cannot predict what impact the elimination of the [long-term] contract will have on the Forest Service's ultimate land use decisions, clearly it affects the range of alternatives to be considered"].) Here, the DEA violates NEPA by failing to analyze the SJRRP assuming no additional funding or the necessity for additional funds identified in the Framework for Implementation.

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2. Less than Full Implementation.

The DEA does not analyze the impacts on the successful reintroduction in the event that less than all measures identified in the Settlement are implemented. Yet, in multiple sections of the DEA, NMFS states that “the flow and habitat improvements to be implemented by the SJRRP represent the best opportunity to have spring-run Chinook reintroduced to the San Joaquin River.” (Page 5-1¹). Further, the DEA does not contain any analysis of the newly identified actions beyond those set forth in the Settlement that Reclamation has identified (in close cooperation with NMFS and other Settling Parties) in the Framework for Implementation that are necessary for the successful reintroduction of spring-run Chinook salmon to the San Joaquin River.

3. No Analysis of Individual Projects and Cumulative Effects Thereof.

Reclamation is currently pursuing two projects in furtherance of the Settlement. These are the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project and the Mendota Pool Bypass and Reach 2B Improvements Project. (See Mendota Pool Bypass and Reach 2B Improvements Project, Project Description Technical Memorandum and the Draft Environmental Assessment/Initial Study and Finding of No Significant Impact/Mitigated Negative Declaration for the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project.) Each of these projects are considered necessary for the successful reintroduction of spring-run Chinook salmon. Each of these projects will have a cumulative effect upon the spring-run and the human environment. There is no analysis of the effect of these projects on the reintroduction of spring-run Chinook salmon, nor is there any analysis of the effect of subsequent projects required to be implemented by the Settlement. Similarly, there is no analysis of the failure to implement either of the above projects or subsequent projects on a successful reintroduction of spring-run Chinook salmon. (*Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) [finding EIS inadequate for failing to address reasonably foreseeable cumulative impacts]; *Border Power Plant Working Group v. Department of Energy*, 260 F.Supp.2d 997, 1033 (S.D. Cal. 2003) [failure to analyze cumulative impact of project on water quality and quantity rendered Environmental Assessment “inherently inadequate.”].) For instance, at page 1-5 the DEA acknowledges “reintroduction will begin with actions appropriate to existing habitat and to refining methods that would be used. Succeeding actions are expected to have more likely success as the habitat improvement and accompanying actions in the Settlement are implemented.” Yet, no analysis is set forth in the event that the succeeding actions are implemented in whole or in part or not implemented at all.

¹ Words of similar effect are also found on the following pages: 1-5, 2-11, 4-16 (Until the habitat improvement projects are completed, in river survival is expected to be low, except in wet years.)

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4. Subsidence.

NMFS is aware that recently discovered significant subsidence has and is still occurring in the Restoration Area and adjacent thereto. The Exchange Contractors have previously commented on the subsidence problem. Please see those comments set forth in the Supplemental Comments to the Final PEIS/R Based on New Information from the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition submitted August 15, 2012. See also, the Exchange Contractors Protest to the United States Bureau of Reclamation Petitions for Change to License 1986 and Permits 11885, 11886 and 11887 (Applications 23, 234, 1465 and 5638), pages 41-42, submitted to the State Water Resources Control Board on June 18, 2012, and the Supplemental Information to Protest of USBR Petitions for Permits 11885, 11886, and 11887 and License 1986 (Applications 23, 243, 1465, and 5638) re San Joaquin Restoration Program, pages 6-7, submitted to the State Water Resources Control Board on August 31, 2012. Those comments are incorporated herein as though fully set forth.

The subsidence is the result of recently initiated deep well pumping from under the Corcoran Clay for overlying lands. Differential subsidence on the scale of up to 0.6 feet per year has been documented within the study area of the SJRRP near Western Madera. Since 2008, subsidence in the study area has been as much as 1.2 feet. The current level of subsidence is as much as 4 feet and freeboard at Sack Dam has been reduced to but a few inches. The SJRRP will need to determine how to address existing and increasing future subsidence. The extreme rate of subsidence may have a significant impact on the SJRRP schedule to complete the planning, design and construction of the Phase I projects. To date the subsidence has resulted in a halt to the further engineering and construction of the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project. Additional Phase I facilities and river reaches that will be impacted include:

- Flow capacity of Reaches 3 and 4A
- Flood flow capacity in the Chowchilla bypass
- Flood flow capacity in the Eastside Bypass
- Modifications at the Reach 4B headgate
- Modifications to the Sand Slough Control Structure
- Modifications in the San Joaquin Reach 4B1

Specific Comments

Section 1.3.1.1. Proposed Designation Will Further the Conservation of the Species.

This Section acknowledges that to achieve the restoration goal, the Settlement requires a combination of channel and structural modifications and habitat improvements, water releases and the reintroduction of Chinook salmon. It further states "with these actions, the prognosis for

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spring-run Chinook populations to return is good.” (citation omitted). Presumably, without one or more of these actions, the prognosis for spring-run Chinook populations to return is less than good. No analysis is provided of the effect on spring-run of less than full implementation of the foregoing measures.

Section 1.4.1. San Joaquin River Restoration Program Environmental Impact Statement/Report.

This section states that the PEIS/R evaluated the “potential direct, indirect, and cumulative impacts on the environment at a program level that could result from implementing the Settlement consistent with the Restoration Act [citations omitted].” However, the PEIS/R did not provide an environmental analysis of the various structural and habitat improvements that needed to be made. Rather, it assumed those were common elements and provided no actual analysis of the impacts of implementing those measures.

The PEIS/R analyzed reintroduction of spring run Chinook with regard to hybridization, competition and disease. This analysis was conducted at the program level. As stated in the Exchange Contractors previously submitted comments to the PEIS/R, the analysis of impacts to salmon from the SJRRP, the impacts to adjacent landowners, agricultural interests, and water supply, was at a programmatic level. Yet, the DEA does not contain the level of analysis required to assess the impact of reintroduction of salmon into the upper San Joaquin River with respect to the aforementioned interests.

Section 1.6. Action area.

Included in the action area is not only the San Joaquin River but the flood control bypasses. The 4(d) rule must cover flood control activities in the Kings River, San Joaquin River and flood control bypasses.

Section 2.0. Proposed action and alternatives.

The section states that the reintroduction process will be implemented such that in any given year the SJRRP will consider the condition of salmon populations and the likely success of reintroduction of spring run. How will this latter analysis be done? What factors will be considered? How will varying levels of success regarding levels of river improvements be taken into account in this analysis?

Section 2.3.1. 10(j) area alternatives.

The preferred alternative is area alternative 2. Area alternative 2 describes the NEP area as the restoration area of the San Joaquin River from Friant Dam to the Merced River and the Kings River to the San Joaquin River. Area alternative 2 excludes the Eastside tributaries on the lower San Joaquin. It is unclear why the tributaries are excluded from the NEP area given that

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there are no established populations of spring-run and only at best questionable reports of spring-run straying to these rivers. The spring-run are at best strays from the Sacramento basin.

Within this section is a subparagraph "a", regarding take exemption on the tributary rivers. The discussion notes the legal requirement to not impose more than a *de minimis* water supply impact, etc. on unwilling third parties. The third-party designation includes the Exchange Contractors. There may not be more than a similar *de minimis* impact on the Exchange Contractors.

Section 2.3.2. 10(j) duration alternatives.

It is essential that the 10(j) experimental population designation remain in effect well beyond 2025. It is now evident that the settlement will not be fulfilled by 2025, nor will the measures included in the Framework for Implementation. It is likely several decades before these measures will be completed. Until such time as all of these improvements or actions are taken, and it can be demonstrated that the salmon population is not only self-sustaining but thriving, the 10(j) designation should remain.

Section 3.2.1. Life history.

The description of the life history of the spring-run Chinook is that when it swims upstream from the Delta it goes to the Sacramento River. There is no indication that spring-run migrate to the San Joaquin River. This is additional evidence that the entire San Joaquin basin should be designated as an NEP area.

Section 3.2.4.3. Diversity.

On page 3 – 3, lines 32-36 the DEA discusses potential sources of phenotypic spring running Chinook that have been observed on the San Joaquin River tributaries. No citation is provided for the potential sources of these salmon. Please provide a citation to back up the hypotheses set forth.

Section 3.3.2.3. Tuolumne River.

On page 3 – 18, line 6-7, no citation is provided for the assumption that spring-run Chinook in some numbers "undoubtedly" ascended the main stem a considerable distance. Similarly, no citation is provided for the statement at lines 15-17 that there have been reports of adult Chinook in the Tuolumne in the spring months of April and May.

At line 21-25 the DEA states that a "hard look" needs to be taken at information regarding the potential presence of spring-run Chinook. Yet, the statements set forth in the DEA are without any support to authoritative accounts of historical spring run. A "hard look" requires a hard look at the evidence as well as the analysis. The evidence cited is at best sparse and

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speculative. Substantiation should be provided.

Section 3.4.2. San Joaquin River from Friant Dam to Merced River.

At page 3 – 21, commencing line 1, the habitat in Reach 1 is described. The description cites concerns with existing in-channel and floodplain pits that reduce native habitat, increase river water temperatures and provide increased habitat for non-native species (which presumably leads to predation). In response to comments to the PEIS/R, Reclamation downplayed the significance of the gravel pits and the predation problem. (*See e.g.* Final Program Environmental Impact Statement/Report for the San Joaquin River Restoration Program, July 2012 (“Final PEIS/R”), pp. 3.8-260 (EC1-110), 3.8-262-63 (EC1-115), 3.8-283-84 (EC1-151f), 3.8-292-93 (EC1-164), 3.8-296-97 (EC1-174), 3.8-305-06 (EC1-191), 3.8-315-316 (EC1-205, 206a), 3.8-324-25 (EC1-222), 3.8-325-26 (EC1-223a).)

At line 16-17 in the section which describes Reaches 2-5, it is stated that there are projects proposed for the SJRRP to improve habitat conditions and support flows that would permit juvenile rearing and adult/juvenile migration. Is there any analysis to support or quantify the extent to which improved habitat conditions or flows would permit such beneficial fish conditions? Please provide citations.

Section 3.4.3. San Joaquin River Tributaries.

At lines 19-21 it is stated that anadromous fish populations on the San Joaquin tributaries are affected by flow and water temperatures. A recent study conducted in conjunction with the hydropower relicensing on the Tuolumne River concludes that 76% to 98% of juvenile salmon are lost to predation. (Predation Study Report, Don Pedro Project FERC No. 2299 (W&AR-07), January 2013.) How does this loss to predation compare with any impacts associated with flow and temperature? It would appear if up to 98% are lost to predation, only a small percentage are affected by flow and temperature.

Section 3.5. Fish Species Within the San Joaquin River Basin.

Table 3 – 10 catalogs the fish found in the San Joaquin River basin and in particular in Reaches 1-5. It is noted that largemouth bass appear in Reaches 1,2,3, and 5. If Reach 4 is rewetted, bass will habituate there as well. How will the presence of bass adversely impact the restoration effort given the likely high predation rate such as that recently documented on the Tuolumne River?

Section 3.5.2. Predation and Disease.

This section discusses predation as being a significant factor affecting juvenile salmon. Yet, in the PEIS/R a contrary position was taken. (*See e.g.*, Final PEIS/R, pp. 3.8-283-84 (EC1-

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151f), 3.8-296-97 (EC1-174), 3.8-315-316 (EC1-205, 206a), 3.8-324-25 (EC1-222), 3.8-325-26 (EC1-223a).) Please explain why a different position is taken in the DEA as compared to the PEIS/R.

Section 3.6.3. Hatchery facilities.

The Interim Facility and the full-scale Conservation Hatchery Facility must be isolated from the San Joaquin River to prevent the escape of unmarked spring-run Chinook salmon until such time as full take protection is provided.

Section 3.6.4. Land Use.

At page 3 – 34 public agencies are identified that occur within the restoration area. The listing fails to include the local public water agencies including the Central California Irrigation District, the Firebaugh Canal Water District, Henry Miller Reclamation District, and local cities.

Table 3 – 12 and the text that follows on page 3 – 35 appear inconsistent regarding the acreages and percentages of land-use within Reach 1.

Section 3.6.5. Water quality.

At lines 2-5 it is stated that water quality improvement would occur regardless of reintroduction of spring-run. This appears to be an inaccurate statement as the hydrographs that are called for in the Settlement are designed specifically for spring-run benefit. There would be no basis for the hydrographs without the presence of spring-run. There is no analysis of what hydrographs would be necessary for fall run Chinook.

Section 3.6.5.1. Water Temperature.

In the PEIS/R the occurrence of high water temperatures was downplayed as a significant limiting factor. The DEA notes high temperatures that are likely to occur in the San Joaquin River in the restoration area. How will these high temperatures adversely impact restoration efforts?

Section 3.6.7. Climate change.

There is speculation regarding the potential water temperature impact to the watershed above Friant Dam due to climate change. Please provide citations to support the notion that water temperatures in the upper San Joaquin River will somehow be spared from significant increases associated with climate change.

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Section 4.1. Introduction. (Environmental consequences).

With respect to the release of salmon to the San Joaquin River, it is stated the changes in river flow and related restoration projects are evaluated in the PEIS/R. The PEIS/R does not provide an evaluation of the numerous projects identified in the settlement.

Section 4.2.1.3. Southern DPS of Green Sturgeon.

How will passage of green sturgeon be accomplished given the impediments that currently exist?

Section 4.3.2. Fish.

At lines 22-29 is speculated that with increased flows and the return of spring-run Chinook salmon the number of predators in the restoration area will not increase. Please provide authority this conclusion. For example, one result of the Tuolumne Study (Predation Study Report, Don Pedro Project FERC No. 2299 (W&AR-07), January 2013.) was a finding that there was no trend relative to flow for habitat use overlap between Chinook salmon and predators. (Table 5.4-3 on page 5-21.)

At lines 30-36 it is stated that barriers to prevent fall-run and spring-run hybridization will be developed and maintained. Where is this discussed in the PEIS/R or other authorities?

On page 4 – 9 regarding predation on the upper San Joaquin River, it is assumed that predation will be similar to the levels on the tributaries. The recent study on the Tuolumne indicates predation rates are very high and independent of flow. If predation is this high in the Restoration area what will be the impact on spring run? What is the basis for that conclusion?

Section 4.3.5. Land-use.

Regarding the impact on agricultural resources and forestry, it is stated that if permission is granted to access private land for collection activities, that potential impacts will be reduced to a non-significant level. Whether permission to access private lands is granted or not has nothing to do with the impacts that will occur. Simply having permission to access the land does not ensure that there will not be adverse environmental impacts.

Section 4.6. Area Alternative 2 (preferred alternative).

It is stated that on the tributaries, water activities will be exempted from the take provisions. Agricultural, municipal and similar uses should also be exempted.

Within the NEP area, in addition to agricultural uses, will water diversion and

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management uses be included in the take exemptions?

The PEIS/R discusses impacts on water related uses, but appears to focus only on the provision within the Restoration Act regarding the *de minimis* impacts. However, the Restoration Act also prohibits the imposition of costs not otherwise voluntarily incurred. Any costs associated with restoration activities that are not voluntarily incurred must be absorbed by the SJRRP.

Section 5. Cumulative impacts.

There are multiple cumulative impacts in addition to the introduction of spring-run. Reintroduction impacts include all of the potential river improvements and habitat changes identified in the Settlement and in the Framework for Implementation. These cumulative impacts should be analyzed. They are not analyzed in the PEIS/R.

Conclusion

Based on the above comments, the Exchange Contractors believe that a full EIS should be prepared to analyze the new discovered information that has emerged since the finalization of the PEIS/R or was not analyzed in the PEIS/R. This information includes Congressional assurances of no additional federal funding above the level already funded, new cost estimates by Reclamation that show core and levee costs at approximately \$1.1 billion and total Framework costs at over \$2 billion, significant subsidence that is and will continue to occur, and the new predation study results from the Tuolumne River. In addition, the Exchange Contractors have identified areas where additional analysis is required to fully assess the impacts of the reintroduction of spring-run to the San Joaquin River.

The Exchange Contractors appreciate the opportunity to comment on the DEA. We look forward to continuing to work with NMFS to develop the SJRRP in a manner that fosters its success in a manner consistent with the Restoration Act and agreements among the Settling an Third Parties.

Sincerely yours,



Thomas M. Berliner

TMB:ccn

cc: San Joaquin River Exchange Contractors Water Authority
San Joaquin River Resource Management Coalition
San Joaquin Tributaries Authority

Duane Morris

Ms. Elif Fehm-Sullivan

March 4, 2013

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San Luis and Delta-Mendota Water Authority

Alicia Forsythe - USBR

DM2\4140687.1

Pikalok Farming
P.O. Box 549, Firebaugh CA 93622

March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"***

Dear Ms. Reed:

As a landowner (and/or farmer) along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Response
#127

Sincerely yours,

Name:
Address:
City, State Zip:

Pikalok Farming
P.O. Box 549
Firebaugh CA 93622

*Pikalok Farming by
Aari Leckie Martin*



State of California – Natural Resources Agency
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4017
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



March 4, 2013

Elif Fehm-Sullivan
Fisheries Biologist, Protected Resources Division
Southwest Region, National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, California 95814

Subject: Comments to Proposed Rule NOAA-NMFS-2012-0221 and Draft
Environmental Assessment

Dear Ms. Fehm-Sullivan:

The California Department of Fish and Wildlife (CDFW) greatly appreciates the opportunity to review and comment on the National Marine Fisheries Service "Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon Below Friant Dam in the San Joaquin River," proposed rule and related Draft Environmental Assessment (Draft EA). CDFW recognizes the important role that the proposed rule plays in the implementation of the San Joaquin River Restoration Settlement Act and the federal standards that guide the rule's development.

As you know, if the Secretary of Commerce designates an experimental population of spring-run Chinook salmon in the San Joaquin River and publishes regulations specifying the management restrictions, protective measures, prohibitions and exceptions to the prohibitions for the population that meet certain standards in California Fish and Game Code, section 2080.4, CDFW has the authority to determine that no further authorization is necessary under state law for any person to take members of that experimental population.

The Department's concurrence with the federal regulations relies on the Department's determination that: 1) the regulations will further conservation of the species; 2) the regulations contain all reasonably feasible management restrictions, protective measures, prohibitions, and exceptions to the prohibitions to avoid and minimize the impacts of any taking allowed by the regulation; and 3) the regulations will not jeopardize the continued existence or recovery of spring-run Chinook salmon, and will not jeopardize the restoration of spring-run Chinook salmon in the San Joaquin River. (See Cal. Fish & G. Code §2080.4(b).)

We are sharing our comments to the proposed rule and Draft EA in light of that statutory background. Further, the Department appreciates the opportunity to assist in the implementation of the San Joaquin River Restoration Program and in the achievement of the Restoration Goal to restore and maintain fish in good condition in the main stem

of the San Joaquin River, including naturally-reproducing and self-sustaining populations of salmon and other fish.

Comments to Proposed Rule:

- Under the section of the preamble entitled “Is the experimental population essential to the continued existence of the species,” at page 3385, the preamble states that NMFS will use as a source population “FRFH fish in excess to what is needed for Feather River operations.” We suggest that this be revised clarify that in order to support the program, the Feather River Fish Hatchery will “plan to produce sufficient fish to allow for eggs or juveniles to be collected,” rather than indicating, as it does currently, that there are excess fish at FRFH.
- Section 4.3.1.1 of the Draft EA currently describes the five-year status review of the species using the following language: “The ESA requires that NMFS conduct a status review every five years for all listed species under its responsibility. These requirements will ensure that NMFS is tracking the status of the reintroduced spring-run Chinook population and will develop information to assess the effectiveness of this rule, and if necessary, will trigger revision to the regulation through the rulemaking process. This will ensure that the reintroduction of spring-run Chinook to the San Joaquin River is providing for the conservation of the species as expected, and that the population is not essential to the continued survival of the species.” We believe this language provides helpful background to the public about ESA requirements, and would suggest including similar or identical language in the preamble to the rule, under the section entitled “Process for periodic review.” We believe it will be valuable for NMFS, in collaboration with CDFW and other partners, to have opportunities to review implementation of this rule and respond to new information.
- We suggest that the preamble summarize that: “This rule incorporates all reasonably feasible management restrictions, protective measures, prohibitions, and exceptions to the prohibitions to avoid and minimize the impacts of any taking allowed by this regulation. The combination of SJRRP actions, implemented to achieve the Restoration Goal, as well as compliance with existing laws, statutes, and regulations, including in particular those that provide specific protections for aquatic and riparian habitats, provide these measures.”
- Paragraph (b)(6) of the rule is entitled “Special Take Exemption Outside of the Experimental Population Area.” We suggest changing the word “special” to “limited” to more accurately indicate that this paragraph provides take exemptions under more limited circumstances than the preceding paragraphs, that is, only to persons or entities diverting or receiving water pursuant to applicable State and Federal laws. Similarly, under the section of the preamble entitled, “Special Take Exemptions Outside of the Experimental Population Area,” we suggest removing the word “special” and replacing it with “limited” in the title and throughout the text. This change would be consistent with the description of these provisions in the Draft EA.

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- Paragraph (b)(6)(i) exempts any take “by otherwise lawful activities related to diverting or receiving water pursuant to applicable State and Federal laws.” We suggest using the language of the federal Settlement Act exactly, and revising the language to say “Any taking...by persons or entities diverting or receiving water pursuant to applicable State and Federal laws.” The Draft EA in various places uses the “relating to” phrase, and we would also suggest changing this to repeat the language of the federal law.

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Comments to EA:

- At page 2-3, line 13-14, the Draft EA mentions potential changes to fishing regulations to accommodate reintroduction. We would suggest revising this to indicate that the California Fish and Game Commission is ultimately responsible for any changes to fishing regulations. For example, the bullet point could state “DFW coordination with NMFS on fishing regulations, for proposal to the California Fish and Game Commission, to accommodate the reintroduction.”
- The list of conditions that are common to all alternatives, in section 2.1.3.2, is very helpful. However, at page 2-4, lines 25-30, some additional detail about the proposed regulatory setting for fish in the area between the current Central Valley spring-run salmon ESU and the NEP area would be helpful for public understanding. Specifically, we recommend an insert on page 2-4 stating that under to the existing 4(d) rule, take of adipose fin-clipped fish would not be prohibited, but all other prohibitions of section 9 would apply to intact fish, with limits on prohibitions that are described in 50 C.F.R. §223.203.
- Section 2.1.3.2, at page 2-4, lines 31-39, explains that under all alternatives, certain state and federal regulations would continue to apply. We suggest that the discussions of the environmental consequences for Land Use, 4.3.5, 4.5.6, 4.6.6, 4.7.1, should include this information as well. This would provide helpful context and analysis to the public and clarify that the management restrictions, protective measures, prohibitions, and exceptions to the prohibitions imposed through these state and federal laws would continue to apply under these alternatives.
- Chapter 3 contains outdated information in several places. Specifically:
 - **Section 3.3.1.3, line 11.** Only 2 dams now exist on lower Mill Creek. A third Dam, Clough, washed away in 1997 and was not re-built.
 - **Section 3.3.1.3.** Figure 3-4 should be corrected. Clough Dam does not exist anymore
 - **Section 3.3.1.5.** Figure 3-6 should be corrected. McCormick-Saeltzer Dam does not exist anymore.

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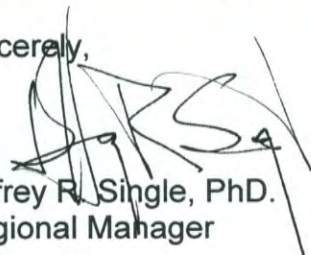
Ms. Fehm-Sullivan
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- We suggest in Section 4.6.1.1, page 4-25, line 18, changing the word “provisions” to “exemptions” for clarity. In this same section, lines 27-29 indicate that some reintroduced fish would stray into the tributaries. We suggest also for clarity that this text should state that because of the existing 4(d) rule, take of clipped fish would not be prohibited.

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We look forward to continued collaboration with NMFS in this process and in working toward the Restoration Goal. If you have any questions or require any clarification regarding our comments, please contact Gerald Hatler, at (559) 243-4014, ext. 259 or Gerald.hatler@wildlife.ca.gov.

Sincerely,



Jeffrey R. Single, PhD.
Regional Manager

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Rm. 151
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-2380 FAX: (916) 574-0682



March 4, 2013

Ms. Elif Fehm-Sullivan
Fisheries Biologist
Protected Resources Division
Southwest Region
National Marine Fisheries Service
650 Capitol Mall, Suite 5 –100,
Sacramento, California 95814

Subject: Comments on Proposed Rule NOAA-NMFS-2012-0221
50 CFR Part 223 [Docket No. 121210693–2693–01] RIN 0648–BC68 Endangered
and Threatened Species: Designation of a Nonessential Experimental Population of
Central Valley Spring-Run Chinook Salmon Below Friant Dam on the San Joaquin
River, California

Dear Ms. Fehm-Sullivan:

While flood protection is the Central Valley Flood Protection Board's (Board) primary objective, the Board supports collaborative multi-benefit solutions to the restoration of year-round flows and habitat in the San Joaquin River, and looks forward to its continued involvement with the National Marine Fisheries Service and other stakeholder partners in this effort.

The Board staff has reviewed the Proposed Rule and provides the following comments:

The Board is responsible for flood risk reduction and public safety within California's Central Valley and maintains the integrity of existing flood control systems, regulated streams, and designated floodways through the Board's regulatory authority. The Board has provided ← assurances to the U.S. Army Corps of Engineers to operate and maintain the San Joaquin River Flood Control Project, including project levees along the San Joaquin River, Fresno River, Berenda and Ash Sloughs, Chowchilla Canal, Eastside and Mariposa Bypasses, Sand Slough Control Structure, and appurtenant structures in these floodways. In turn, the Board has assigned the operations and maintenance responsibilities of these facilities to the Lower San Joaquin Levee District. These flood control facilities are in the proposed project area and could be impacted by this proposed rule.

Response
144

Speculative Evidence. Significant environmental changes have occurred in areas where the proposed experimental population will be regulated under the proposed rule. In our opinion, ← the proposed rule does not provide sufficient evidence to support that the existing conditions of the floodways in the project area would provide conditions conducive to the Central Valley (CV) spring-run Chinook salmon.

Response
143

Page 3382 of the proposed rule states:

"The proposed experimental population will occur in the San Joaquin River from its confluence with the Merced River upstream to Friant Dam and will include all sloughs,

channels, and water ways that allow for CV spring-run Chinook salmon passage along the San Joaquin River and will also include portions of the Kings River, when high water years hydraulically connect the Kings River with the San Joaquin River.”

Section 10(j) of the Endangered Species Act (16 USC 1539(j)) (ESA 10(j)) states:

Experimental populations

(1) For purposes of this subsection, the term “experimental population” means any population (including any offspring arising solely there from) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this chapter, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 1536 of this title (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 1533 of this title; and

(ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.”

In our opinion, there is insufficient detail to include all sloughs, channels, and water ways that allow for CV spring-run Chinook salmon passage along the San Joaquin River. ESA 10(j) states:

“(ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.”

Response
142

Further consideration should be given to establishing a limited and focused geographic area at an early time that will provide greater flexibility to deal with basic flood control problems and cumulative impacts to facilities of the State Plan of Flood Control in the project area under Board jurisdiction. ←

Response
141

Adverse Fiscal Impacts. The Board adopted the 2012 Central Valley Flood Protection Plan (CVFPP) which provides a framework to develop new multi-benefit flood risk reduction projects and improvements to existing facilities. The proposed rule could increase the cost of and delay these future projects and improvements needed to better protect lives and property in the Central Valley. ←

Response
140

The 2013-14 Budget: Resources and Environmental Protection, California Legislative Analyst, February 2013 Report, page 3 states:

"Billions in Appropriated Bond Funds Unspent. Our analysis finds that in many cases, departments in the resources and environmental protection area (such as DWR) have not spent appropriated funds in particular fiscal years as planned."

In our opinion the proposed rule could increase environmental permitting rules, delay project timelines, and cause flood project costs to increase. As a result, it is likely that fewer flood risk reduction projects would be constructed to reduce the residual risks to public safety due to flooding.

Response
139


Flood Project Priorities. The proposed rule will likely accelerate planning of future environmental restoration projects as the Board is just now beginning to develop project plans and request approvals for flood protection projects. The Lower San Joaquin Levee District is leading the local effort to develop a Regional Flood Management Plan in areas which include all waterways within your proposed project boundary. Our Board holds flood protection projects which improve public safety as its highest priority. The proposed rule should consider flood protection and environmental restoration as co-equal priorities and include alternatives that best fit with and which would allow the State to construct cost effective flood protection projects. ←

Response
138

Maps depicting all tributaries and distributaries of the San Joaquin River regulated streams, and designated floodways under the Board's jurisdiction can be accessed at the Department of Water Resources Best Available Maps website at <http://gis.bam.water.ca.gov/bam/>. Click on the "View Floodway Data" button at the lower right portion of the screen.

Thank you for providing the opportunity to comment on your proposed rule. Please contact Mr. Len Marino, Chief Engineer, at (916) 574-0698, or via email at lmario@water.ca.gov if you have any questions.

Sincerely,


Jay S. Punia
Executive Officer

Name	Address	Telephone #	E-mail Address	Affiliation
------	---------	-------------	----------------	-------------

Comment:

Elizabeth Leeper on behalf of San Luis & Delta-Mendota Water Authority & its member agencies, eleeper@kmitg.com

Comment

1) Does rule adequately address relationship between section 7 consultation & de minimus water supply impact w/ respect to experimental fish outside the experimental area?

2) Does 4(d) take exemption provide for exemption for activities that result in indirect take in the delta (e.g. changes in flow patterns, etc.)?

3) Does rule provide enough detail re

notice & comment procedure for technical memorandum re accounting for % of SS river salmon salvaged in delta?

4/28/2010

Response Number 145

Response Number 146

Response Number 147

Kerry Burke Hanna

40652 Highway 36 E
Mill Creek, CA 96061

Elif Fehm-Sullivan
Protected Resources Division
National Marine Fisheries Service
650 Capitol Mall # 5-100
Sacramento, CA 95814-4706
SJR Spring.Salmon@noaa.gov

March 7, 2011

Subject: Opposition and concerns of any use of Mill Creek wild
Spring-run Chinook Salmon for the San Joaquin River Settlement Agreement Project

Dear Ms. Fehm-Sullivan,

Per my address at the meeting in Chico last month, I am opposed to the use of any form of Mill Creek wild Spring-run Chinook Salmon at this early stage of the San Joaquin River Restoration Project. The project needs to:

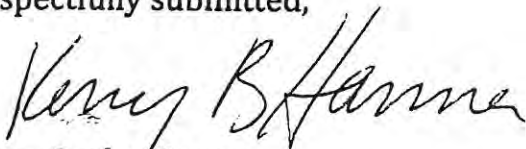
1. Secure adequate water flows to support spring-run Chinook Salmon, Response # 148
2. Need to restore the riparian area in order to support fish, Response # 149
3. Need to monitor the area to determine what fish can survive in the lower San Joaquin River and what fish will natural migrate to the area if the conditions warrant survival. Response # 150

All of these tasks will take decades to determine if Spring Run Chinook salmon could survive in the lower San Joaquin River.

Please address all the concerns raised the Mill Creek Conservancy letter. That expresses my overall issues to date with the approach of this project. Restoration takes a long time, and you can't rush results. Proposing to place genetically different fish that have totally adapted to a high elevation, cold water habitat in Mill Creek is a risk to our native fish population that I can not support. Response # 151

I appreciate that your agency is trying to explore alternatives, however use of the Mill Creek wild Spring Run Chinook salmon is not appropriate given the numerous risk.

Respectfully submitted,


Kerry Burke Hanna



March 4, 2013

Ms. Elif Fehm-Sullivan
Fisheries Biologist
Protected Resources Division
Southwest Region
National Marine Fisheries Service
650 Capitol Mall
Suite 5-100
Sacramento, CA 95814

Re: Comments on Proposed Rule; Endangered and Threatened Species: Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon Below Friant Dam in the San Joaquin River, CA

Dear Ms. Fehm-Sullivan,



Please accept the following comments on the above-referenced 10(j)4(d) rule on behalf of the Kings River Water Association (KRWA) along with its member units (listed in Appendix A), and the Kings River Conservation District (KRCD). Please include these comments in the administrative record for the Proposed Rule.

The KRWA is an organization representing the 28 public districts and canal companies with Kings River water rights. The KRWA is responsible for the administration of those entitlements and water release operations. The KRCD is a multi-county special district created in 1951 to manage resources within the watershed on the lower Kings River. KRCD serves constituents in an area comprising 1.2 million acres in portions of Fresno, Kings and Tulare counties. These two agencies partner with the California Department of Fish and Wildlife (CDFW) in the Kings River Fisheries Management Program (KRFMP) which is dedicated to improving and enhancing the Kings River watershed and fishery habitat while maintaining its beneficial uses.

A fundamental premise of the San Joaquin River Restoration Program (SJRRP) is that the Program is to have no impacts on parties other than Friant Division contractors and their water users. That core principle is embedded in the stipulation that resulted in the SJRRP, the legislation that implemented that stipulation, and in a number of other agreements and assurances provided as the SJRRP was being developed. The KRWA and KRCD provide these comments as potentially affected third parties.


First of all, the KRWA and KRCD would like to commend the National Marine Fisheries Service (NMFS) for the process in developing this proposed rule. The numerous public meetings, general staff availability, and all materials provided were extremely helpful in understanding the proposed rule itself. NMFS is to be commended for adhering to the public process, and the KRWA and KRCD are very appreciative of all the hard work and time that NMFS staff has dedicated to ensuring the public fully understands the proposed rule. It is the desire of the KRWA and KRCD that these processes continue to be followed for development of potential future rules affecting or relating to the SJRRP.

As per the text in the proposed rule itself, the KRWA and KRCD will structure our comments based on the seven requested categories:

- 1) *The geographical boundary of the designated experimental population.* The KRWA and KRCD are in agreement with the geographical boundary of the designated experimental population in the proposed rule as proposed by NMFS. 
- 2) *The extent to which the experimental population would be affected by current or future Federal, State, or private actions within or adjacent to the experimental population area.* The KRWA and KRCD remain concerned with the potential for redirected impacts on the Kings River Fishery due to the eventual re-introduction of a threatened species into the San Joaquin River to the north. In chapter 21.0 of the SJRRP Programmatic EIS/EIR, closures are suggested as a possibility on the San Joaquin River with re-introduction of Spring-Run Salmon, and it is suggested that the Kings River could be a potential fishery for anglers to relocate to. Obviously, the KRWA and KRCD are very concerned about this conclusion, considering no mitigation measures for the potential significant increase in fishing pressure on the Kings River were proposed. 

Response #
152

Response #
153

In the current proposed rule, the language states "As noted above, we propose to prohibit the intentional take of CV spring-run Chinook salmon in the experimental population area by angling. We intend to work with CDFW to review fishing regulations in the geographic area in order to minimize the impact of this prohibition on current angling on other species..." This language suggests that a total closure may not be necessary and, if that is the case, at least a few of the KRWA and KRCD concerns regarding redirected fishing pressure may be mitigated to some extent. The KRWA and KRCD recognize that NMFS does not have the final authority on this decision, as the local fishing regulations are the responsibility of the Fish and Game Commission and CDFW, but we still wanted our concerns on this process documented appropriately. Any material increase in fishing pressure on the Kings River due to angling restrictions on the San Joaquin River could have extremely detrimental impacts on the Kings River fishery that has been the target of so much investment via the KRFMP. 

Response #
154

- 3) *Any necessary management restrictions, protective measures, or other management measures that we may not have considered.* The KRWA and KRCD are in concurrence with the management measures utilized in the development of this proposed rule. In addition, the

KRWA and KRCD would like to see this proposed rule used as a template for developing other rules within the SJRRP area of influence regarding additional threatened or listed species of concern. It is the hope of the KRWA and KRCD that the same public process that has been observed in this case will be followed for rule development for these other listed species.

Response # 155

- 4) *The extent to which we have provided protections for third parties as required by the SJRRSA.* The KRWA and KRCD feel that the proposed rule provides adequate protections for us as third parties while the rule is in effect, with the exceptions noted in the comments provided. However, we continue to be concerned about impacts upon any termination or modification of the rule and feel that physical barriers to migration of anadromous species into the Kings River during flood events is a superior approach. See below.

Response # 156

- 5) *Whether we should propose the experimental population as nonessential.* Based on the evidence presented, the KRWA and KRCD concur with the findings of NMFS that the designation of Experimental nonessential is appropriate. The time frame of the proposed rule and the proposed process for periodic review are also equally appropriate.

Response # 157

- 6) *Whether the proposed designation furthers the conservation of the species and we have used the best available science in making this determination.* The KRWA and KRCD have no comment.

- 7) Additional Comments. The following is text extracted from the proposed rule as published in the Federal Register, Volume 78, Number 11 on Wednesday, January 16, 2013:

In addition, protective measures, including programs for strategic screening and participation in habitat conservation programs, will be implemented in conjunction with SJRRP activities and are intended to provide a net benefit to the reintroduction. The SJRRP restoration actions, in combination with the protective measures proposed in this rule, as well as compliance with existing Federal, State and local laws, statutes, and regulations, including those mentioned above, are expected to ensure the survivability of the experimental population in the San Joaquin River into the foreseeable future.

This language concurs with NMFS staff public presentations that state that the proposed rule assumes the habitat enhancement actions proposed under the SJRRP will take place. In comments on previous SJRRP documents, the KRWA and KRCD have expressed concern over the potential for straying of species into the Kings River during times of connectivity in flood years, and have pushed for a barrier to be installed to ensure the survival of the CV Chinook Salmon in their intended channel which will be improved for that very purpose. The KRWA and KRCD would like to reiterate this position that a barrier to direct returning adults to the proper main San Joaquin River Channel during times of flood should be considered a high priority for the SJRRP as a whole. It is the position of the KRWA and KRCD that a barrier, in addition to the proposed rule would be the best solution for ensuring the survival of these species.

Response # 158

Ms. Elif Fehm-Sullivan

March 4, 2013

Page 4 of 5

Thank you for your consideration of our comments. If you have any questions in regards to these comments, please direct these to:

Clifton Lollar
Resource Analyst
Kings River Water Association
4888 E. Jensen Ave.
Fresno, CA 93725
(559) 266-0767
clollar@kingsriverwater.org

Sincerely,



David Orth, General Manager
Kings River Conservation District



Steve Haugen, Watermaster
Kings River Water Association

cc: Representative Jim Costa
Representative Devin Nunes
Representative Tom McClintock
Representative David Valadao
Senator Dianne Feinstein
Senator Barbara Boxer
The Ferguson Group Inc.

Appendix A

The members of the KRWA are as follows:

ALTA IRRIGATION DISTRICT, an irrigation district
BURREL DITCH COMPANY, a corporation
CLARK'S FORK RECLAMATION DISTRICT NO. 2069, a reclamation district
CONSOLIDATED IRRIGATION DISTRICT, an irrigation district
CORCORAN IRRIGATION COMPANY, a corporation
CRESCENT CANAL COMPANY, a corporation
EMPIRE WEST SIDE IRRIGATION DISTRICT, an irrigation district
FRESNO IRRIGATION DISTRICT, an irrigation district
JAMES IRRIGATION DISTRICT, an irrigation district
JOHN HEINLEN MUTUAL WATER COMPANY, a corporation
KINGS RIVER WATER DISTRICT, a water district
LAGUNA IRRIGATION DISTRICT, an irrigation district
LAST CHANCE WATER DITCH COMPANY, a corporation
LEMOORE CANAL & IRRIGATION COMPANY, a corporation
LIBERTY CANAL COMPANY, a corporation
LIBERTY MILL RACE COMPANY, a corporation
LOVELACE WATER CORPORATION, a corporation
PEOPLES DITCH COMPANY, a corporation
REED DITCH COMPANY, a corporation
RIVERDALE IRRIGATION DISTRICT, an irrigation district
SOUTHEAST LAKE WATER COMPANY, a corporation
STINSON CANAL & IRRIGATION COMPANY, a corporation
STRATFORD IRRIGATION DISTRICT, an irrigation district
TRANQUILLITY IRRIGATION DISTRICT, an irrigation district
TULARE LAKE BASIN WATER STORAGE DISTRICT, a water storage district
TULARE LAKE CANAL COMPANY, a corporation
TULARE LAKE RECLAMATION DISTRICT NO. 761, a reclamation district
UPPER SAN JOSE WATER COMPANY, a corporation



March 4, 2013

Ms. Elif Fehm-Sullivan
Fisheries Biologist
Protected Resources Division
Southwest Region
National Marine Fisheries Service
650 Capitol Mall
Suite 5-100
Sacramento, CA 95814

Re: Draft Environmental Assessment for Nonessential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam.

Dear Ms. Fehm-Sullivan,

Please accept the following comments on the above-referenced Environmental Assessment on behalf of the Kings River Water Association (KRWA) along with its member units (listed in Appendix A), and the Kings River Conservation District (KRC D). Please include these comments in the administrative record for the Environmental Assessment.

The KRWA is an organization representing the 28 public districts and canal companies with Kings River water rights. The KRWA is responsible for the administration of those entitlements and water release operations. The KRC D is a multi-county special district created in 1951 to manage resources within the watershed on the lower Kings River. KRC D serves constituents in an area comprising 1.2 million acres in portions of Fresno, Kings and Tulare counties. These two agencies partner with the California Department of Fish and Wildlife (CDFW) in the Kings River Fisheries Management Program (KRFMP) which is dedicated to improving and enhancing the Kings River watershed and fishery habitat while maintaining its beneficial uses.

A fundamental premise of the San Joaquin River Restoration Program (SJRRP) is that the Program is to have no impacts on parties other than Friant Division contractors and their water users. That core principle is embedded in the stipulation that resulted in the SJRRP, the legislation that implemented that stipulation, and in a number of other agreements and assurances provided as the SJRRP was being developed. The KRWA and KRC D provide these comments as potentially affected third parties.

*Kings River Conservation District
4886 E. Jensen Avenue
Fresno, CA 93725 (559) 237-5567*

*Kings River Water Association
4888 E. Jensen Avenue
Fresno, CA 93725 (559) 266-0767*

First of all, the KRWA and KRCD would like to commend the National Marine Fisheries Service (NMFS) for the process in developing this Environmental Assessment. The numerous public meetings, general staff availability, and all materials provided were extremely helpful in understanding the Environmental Assessment itself. NMFS is to be commended for adhering to the public process, and the KRWA and KRCD are very appreciative of all the hard work and time that NMFS staff has dedicated to ensuring the public fully understands the role of the Environmental Assessment. It is the desire of the KRWA and KRCD that these processes continue to be followed for development of future Environmental Assessments affecting or relating to the SJRRP.

As per the requests of SJRRP staff at the public meetings, the KRWA and KRCD will structure our comments based on five requested categories:

- 1) *Factual Information and Errors.* Two minor errors were located. On page 1-12, lines 11-12, the text states "The basic features of the bypass system include: Fresno Slough (also known as James Bypass)..." Later on in the document, on page 3-20, lines 22-24 state "Potential false pathways created by the bypass and canal systems are Salt Slough, Mud Slough, Bear Creek, Ash Slough, Berenda Slough, Dry Creek, Fresno River, Lone Willow Slough, James Bypass..." For the sake of consistency, Fresno Slough should probably be utilized in this location as it was on page 1-12. On page 5-2, line 24, the text states "... statewide average annual temperatures will be 36-42F higher..." This is likely a factual error as well.

Response
#159

- 2) *Affected Environment or Action Area.* The KRWA and KRCD are in agreement with the geographical boundary of the designated experimental population in the Environmental Assessment as well as the Affected Environment analysis with one caveat. With the recognition of the Fresno Slough/James Bypass as a potential false pathway for Central Valley Spring-Run Chinook Salmon as identified on Page 3-20 in Section 3 of the document, the KRWA and KRCD would like to reiterate this position that a barrier to direct returning adults to the proper main San Joaquin River Channel during times of flood should be considered a high priority for the SJRRP as a whole.

Response
#160

According to the Environmental Assessment, it is assumed under the action alternatives that all the habitat enhancement actions proposed under the SJRRP will take place. In comments on previous SJRRP documents, the KRWA and KRCD have expressed concern over the potential for straying of species into the Kings River via the Fresno Slough during times of connectivity in flood years, and have pushed for a barrier to be installed to ensure the survival of the CV Chinook Salmon in their intended channel which will be improved for that very purpose. It remains the position of the KRWA and KRCD that a barrier at this location, in addition to the proposed regulations this Environmental Assessment discusses, would be the best solution for ensuring the survival of these species.

- 3) *Impacts Not Identified.* The KRWA and KRCD remain concerned with the potential for redirected impacts on the Kings River Fishery due to the eventual re-introduction of a threatened species into the San Joaquin River to the north. In chapter 21.0 of the SJRRP Programmatic EIS/EIR, closures are suggested as a possibility on the San Joaquin River with re-introduction of Spring-Run Salmon, and it is suggested that the Kings River could be a potential fishery for anglers to relocate to. Obviously, the KRWA and KRCD are very concerned about this conclusion, considering no mitigation measures for the potential significant increase in fishing pressure on the Kings River were proposed.

In the current Environmental Assessment, the language states on page 4-10, lines 35-36 "While fishing for other species of fish would continue, the opportunity to fish for planted trout would end." The elimination of stocking on the San Joaquin River will likely reduce the trout population significantly, and if that is indeed the case, the KRWA and KRCD remain extremely concerned regarding unmitigated redirected fishing pressure of trout fisherman to the Kings River fishery.

The KRWA and KRCD recognize that NMFS does not have the final authority on this regulatory decision, as the local fishing regulations are the responsibility of the Fish and Game Commission and CDFW, but we still wanted our concerns on this process documented appropriately. Any material increase in fishing pressure on the Kings River due to angling restrictions and stocking changes on the San Joaquin River could have extremely detrimental impacts on the Kings River fishery that has been the target of so much investment via the KRFPMP.

- 4) *Are impacts adequately analyzed and addressed?* With the exceptions noted above, the KRWA and KRCD are satisfied with the analysis presented in the Environmental Assessment.

- 5) *Additional Comments.* At this time the KRWA and KRCD offer no additional comments.

Thank you for your consideration of our comments. If you have any questions in regards to these comments, please direct these to:

Clifton Lollar
Resource Analyst
Kings River Water Association
4888 E. Jensen Ave.
Fresno, CA 93725
(559) 266-0767
clollar@kingsriverwater.org

Response
#161

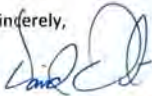
Response #162

Ms. Elif Fehm-Sullivan

March 4, 2013

Page 4 of 5

Sincerely,



David Orth, General Manager
Kings River Conservation District



Steve Haugen, Watermaster
Kings River Water Association

cc: Representative Jim Costa
Representative Devin Nunes
Representative Tom McClintock
Representative David Valadao
Senator Dianne Feinstein
Senator Barbara Boxer
The Ferguson Group Inc.

Appendix A

The members of the KRWA are as follows:

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TULARE LAKE RECLAMATION DISTRICT NO. 761, a reclamation district
UPPER SAN JOSE WATER COMPANY, a corporation

Mill Creek Conservancy

40652 Highway 36 E
Mill Creek, CA 96061

Elif Fehm-Sullivan
Protected Resources Division
National Marine Fisheries Service
650 Capitol Mall # 5-100
Sacramento, CA 95814-4706
SJR Spring Salmon Agreement

February 14, 2011

Subject: Mill Creek Conservancy opposition and concerns of any use of Mill Creek wild Spring-run Chinook Salmon for the San Joaquin River Settlement Agreement Project

Dear Ms. Fehm-Sullivan,

Mill Creek Conservancy organization and position

The Mill Creek Conservancy is a 501-c3 organization dedicated to the continued preservation of the Mill Creek Watershed Ecosystem. Our non-profit organization is a group of landowners, members of the local community and others committed to the protection of the Mill Creek watershed for future generations. In our nearly 20 year history we have devoted thousands of volunteer hours to the goal of understanding the dynamics of resource planning and management and working for long term improvement and protection of this unique and important watershed. Our diverse group of landowners, neighbors, and various agencies have worked together over these past numerous years to benefit the distinct natural and cultural values that are contained within our treasured watershed, including very specific efforts for the survival of the wild Mill Creek Spring-run Chinook salmon, steelhead and other wildlife.

Some of our successful actions to protect and enhance our wild spring-run Chinook Salmon include:

- Initiated AB 1413 to protect Mill and Deer Creek from additional dams or water impoundments
- Initiated, completed and have continued to implement the Mill Creek Watershed Management Strategy with the help of the community, numerous public agencies and other resource protection groups
- Partnered with local landowners, The Nature Conservancy and Los Molinos Unified School District on several riparian vegetation restoration and enhancement projects
- Coordinated with local Department of Fish and Game wardens on a Spring-Run Salmon Protection Program specifically for Mill Creek

- Secured funding for feral cow removal in sensitive spring-run Chinook Salmon holding, spawning and rearing areas on Mill Creek
- Supported Water Exchange Agreements for fish passage flows in lower Mill Creek
- Secured Federal Bureau of Reclamation grant for Lower Mill Creek Restoration Flow Management Agreement, completing a CalPoly Water Use Efficiency Study, a Department of Water Resources groundwater conjunctive use study and a Department of Fish and Game Surface Flow Criteria for Salmon Passage Study
- Pursuing the purchasing of water rights to be used for the benefit of Chinook flows in Mill Creek
- Supporting Conservation Easements on Mill Creek that limit development and activities that could be harmful to the habitat quality
- Assisted with Dr. Matthew Kondolf with Fluvial Geomorphic study of Mill Creek
- Support Department of Fish and Game Spring-Run Chinook monitoring activities and funding for Mill Creek

These actions are proving beneficial to ensuring survival and productivity of our salmon resource in the Mill Creek Watershed. We therefore oppose any efforts by any individual, group or agency that could compromise wild Mill Creek Spring-run Chinook Salmon.

We have reviewed the numerous documents that have been provided regarding this issue. It is very disturbing that a lawsuit and settlement regarding a specific environmental issue that is hundreds of miles from Mill Creek and completely unrelated to it, proposes solving a portion of San Joaquin watershed problem by extracting a protected endangered species from our watershed.

The Mill Creek Conservancy has been partners with the California Department of Fish and Game, U. S. Bureau of Land Management, Lassen National Forest, Department of Water Resources, Lassen Volcanic National Park, California Department of Forestry, The Nature Conservancy, The Tehama County Natural Resource Conservation Service, Pacific Coast Federation of Fishermen's Association, Los Molinos Mutual Water Company, Los Molinos Unified School District, U. S. Bureau of Reclamation, Spring-Run Work Group, Sierra Pacific Industries and many other organizations. We have worked directly with the U. S. Fish and Wildlife Service on several projects to improve Mill Creek Spring-run Chinook Salmon and steelhead habitat. We are deeply concerned that our precious and imperiled population of wild salmon are proposed to be utilized in a manner that could threaten their survival in their natal habitat, Mill Creek.

No scientific documentation or potential mitigation measures provided in these documents that offers any comfort to the Mill Creek Conservancy. All our efforts over the years could be for naught if this misguided long-distance raid on our natural heritage is carried out. With all due respect for the attempt to improve the situation in the San Joaquin River, depleting Mill Creek's run of wild Spring-run Chinook Salmon is a monumentally wrong-headed solution to your predicament. Numerous public agencies, studies, grants and earnest enterprise by countless individuals have been committed to the preservation of the wild Mill Creek Spring-run Chinook Salmon. How can a responsible public agency suggest a proposal that is so contrary to the stated goals of the U. S. Fish and Wildlife Service Anadromous Fish Doubling program, which has sought to increase the wild Mill Creek Spring-run Chinook Salmon population but as yet has not come close to meeting that laudable aim?

The Mill Creek Conservancy Board of Directors has met regarding this issue and several Board members made presentations at the Public Workshop held on February 3, 2011 in Chico, California. Our voice is loud and clear. You must seek and secure alternatives to your proposal of utilizing wild Mill Creek Spring Run Chinook Salmon. The proposed San Joaquin River habitat will not sustain Mill Creek Spring Run Chinook Salmon that primarily spawn in protected habitat from 2,700 – 5,200 feet in elevation. The project documents are woefully deficient on numerous topics discussed further in this letter that would also impact the survival of any relocated Mill Creek fish. Therefore your agencies should not be allowed to take any eggs, smolts or adult fish from Mill Creek endangered stocks.

Settlement

NOAA, FWS, BOR, DFG, the attorneys for the San Joaquin settlement, or another appropriate party should have coordinated with the Mill Creek Conservancy and other "donor" watersheds before designing a terminally flawed solution dependent upon a source that is at risk of extinction in it's natal habitat. In fact it is very disturbing that neither the Mill Creek Conservancy nor other "donor" creek representatives were invited or present at the April 28, 2010 meeting regarding this project.

The Mill Creek Conservancy is opposed to the wild Mill Creek Spring-run Chinook Salmon being utilized as an "experimental population." We have worked hard for decades to ensure that wild Mill Creek Spring-run Chinook Salmon remain genetically pure, unmolested by humans and given the best opportunity to thrive in their native watershed. The San Joaquin's long, convoluted lawsuit and eventual settlement should not include a remedy from a totally unrelated party, namely our wild Mill Creek Spring-run Chinook Salmon.

←
Response
#163
↓

On page 6, section 7, line 17 – 19 of the Notice of Lodgment of Stipulation of Settlement it states that “The Parties neither intend or believe that the implementation of this Settlement will have a material adverse effect on any third parties or other streams or rivers tributary to the San Joaquin River.” However the Settlement did not consider the potential material adverse effect to the donor fish population. The Mill Creek Conservancy believes that this proposed implementation of the Settlement could have a materially adverse effect on our wild Mill Creek Spring-run Chinook Salmon and therefore would not be considered for use in this project.

Response
#163

CEQA / NEPA, “Reintroduction Strategies” document

Why are there no CEQA or NEPA documents with the “Enhancement of Species Permit Application? You need to address appropriate alternatives and not just the stated plan that would take fish before the necessary habitat conditions are secure and determined adequate for wild Spring-run Chinook Salmon survival. *How can you have a Permit Application prior to the preparation of a NEPA document?*

Response
#164

It is also disturbing that the “Reintroduction Strategies” has only a draft outline and is not available for public review at this time. These documents should be included in your permit process. Calling your project an “Enhancement of Species” does not encompass the potential adverse and devastating impacts to the donors continued existence in their native habitat.

Enhancement of Species Permit Application

This Enhancement of Species Permit Application will have an adverse impact to an endangered species, namely the wild Mill Creek Spring-run Chinook Salmon. That is of paramount concern to the Mill Creek Conservancy. You need to secure an experimental salmon population for the purposes of reintroduction that does not involve using threatened wild Mill Creek Spring-run Chinook Salmon populations and putting them at further risk of extinction.

Response
#165

Our current fish population is well below any level that could even conceivably justify any “donation or taking” of our wild Mill Creek Spring-run Chinook Salmon. Page 77 of the permit application clearly indicates that the wild Mill Creek Spring-run Chinook Salmon has never met the AFRP production target in 17 years of monitoring, and that in fact there has been a 40% reduction in the average population in the noted time period. It should be abundantly clear from this that wild Mill Creek Spring-run Chinook Salmon are not currently or in the foreseeable future a candidate donor to the San Joaquin project.

As figure 10 on page 78 indicates, the natural production of the wild Mill Creek Spring-run Chinook Salmon is at its lowest point in 16 years. The target AFRP population is 4,500 fish, but only 362 were counted in 2008 and 220 in 2009 (page 98). Therefore we should not be included in this program that will threaten our precarious fish population. How can you even suggest that wild Mill Creek Spring-run Chinook Salmon be used since we have never come close to meeting the USFWS population target since fish have been counted?

Response
#165

Also, our fish should not be grouped with Deer Creek stock as mentioned on page 96 of the permit application. Numerous sources indicate that wild Mill Creek Spring-run Chinook Salmon are distinct both genetically and phenotypically, from other Spring-run Chinook stocks in the Central Valley. Mill Creek is generated from the southern slopes of a 10,500 foot volcano with an annual snowpack, natural springs and undisturbed, protected habitat that other spring-run Chinook streams don't have and can not replicate. Mill Creek's wild Chinook evolved to maximize survival in these unique habitat attributes of our watershed. This difference should be protected from dilution and distress.

Draft Stock Selection Strategy

The Draft Stock Selection Strategy, Draft 2010 should also be completed prior to any decision is made regarding this important topic. The risks and uncertainties for the entire program are huge and do not warrant the use of any life stage of wild Mill Creek Spring-run Chinook Salmon. Table 6-4 on page 6-9 is inaccurate in the depiction of the status of wild Mill Creek Spring-run Chinook Salmon. It is over simplified and is in direct conflict with other agencies' determinations regarding the risk of extinction. As stated in this same report on page 7-2, lines 29 - 30: **"For the past two years the Deer and Mill Creek adult escapement estimates have been below the 250 threshold that puts them at high risk of extinction."** Please heed these facts and their serious warning. Do not use wild Mill Creek Spring-run Chinook Salmon for your donor stocks. This would be an irresponsibly dangerous squandering of a precious natural resource that we have worked very hard to protect.

Response
#166

Separation of Runs

What measures are in place to ensure genetic isolation of introduced spring-run Chinook with other Chinook runs? Specifically, how will late arriving Spring Run Chinook salmon be separated from early arriving Fall Run? Will these measures be implemented prior to fish introduction and full settlement flows releases?

Response
#167

Hybridization issues

How will any of the donor stocks be protected from hybridization?

Response
#168

Hatchery concerns

Since there is no hatchery on Mill Creek for salmon, steelhead or trout we are very concerned about impacts to our native, wild fish from Mill Creek. There are no planted fish on Mill Creek either. There is a concern that some hatchery fish may return to Mill Creek and have the potential to contaminate our native, wild fish in Mill Creek.

Response
#169

Delta Survival

What measures are being proposed to ensure that the reintroduced San Joaquin salmon will survive in the Delta? Are these fish being raised just to meet a court order but will have no chance of survival in the Delta, ocean or in the lower San Joaquin River designated (not actually proven) spawning area?

Response
#170

Required water flows and temperatures

It seems prudent to study the San Joaquin watershed's condition once the legally required flows are secured and maintained for several life cycles of the Spring-run Chinook Salmon. Perhaps 20 years of the additional flows could provide an indication if the water temperatures would be sufficient to support Spring Run Chinook salmon. The Mill Creek Spring Run Chinook Salmon have very specific water temperature requirements from the Mill Creek watershed and Lassen Volcanic National Park. How can the San Joaquin River provide an appropriate water climate for the wild Mill Creek Spring Run Chinook Salmon. The wild Mill Creek Spring Run Chinook Salmon habitat includes a very distinct water chemistry that orientates directly from Lassen Volcanic National Park that the fish utilize to navigate back to their natal stream. How can the Reintroduction project utilize the wild Mill Creek Spring Run Chinook Salmon given their specific habitat and water requirements. Have any studies been performed to determine the potential impacts from climate change on this proposal?

Response
#171

Habitat restoration

When will habitat restoration of proposed spring Chinook habitat be completed? Has a survey been completed to ascertain if adequate spawning gravel exists in the riverbed? Has funding been secured for continual gravel supplementation, even after full restoration has been completed? How much shaded riparian habitat is being proposed? How will interfacing with humans be minimized when the proposed spawning area is in a flat exposed area?

Response
#172

Different Options, Approaches and Concerns

The risks are entirely too great at this time given the lack of protection for any Mill Creek Spring run Chinook salmon to be utilized in this endeavor. The wild Mill Creek Spring-run Chinook Salmon are celebrated as holding and spawning at the highest elevation (5,000') in California, if not North America. The Mill Creek watershed is protected by public land ownership over 50% of the land area, numerous volunteer conservation easements on private land and the majority of the watershed is very remote without road access. Our watershed and creek are distinctly different from the San Joaquin river system. There is no analysis regarding this difference and how it would impact the chance of survival of wild Mill Creek Spring-run Chinook Salmon in the "hot, flat and crowded " environs of the San Joaquin River. It is hard to imagine the **geo-shock** that would occur to any species relocated to such a seemingly hostile environment given the current condition of the Mill Creek watershed. There is no justification of using wild Mill Creek Spring-run Chinook Salmon in the San Joaquin River project due to the mountain of risk to our endangered species that is currently at very low numbers.

The Mill Creek Conservancy recommends that you:

- Secure and complete the legally required flow restoration
- Reintroduce water to the San Joaquin River
- Reestablish riparian vegetation and complete habitat restoration
- Study and monitor water temperatures, flows, chemistry
- Study and monitor riparian vegetation
- Study and monitor any salmon that return to the restoration area over several salmon life cycles

Then, and only if the conditions warrant fish survival, consider utilizing nearby hatchery fish.

The Mill Creek Conservancy hopes that these valid concerns and questions are heard by your agencies and that additional efforts are made to seek a more prudent course of action to promote fish in the yet to be restored San Joaquin River.

Respectfully yours,

Burt Bundy, President
Mill Creek Conservancy

Monty Schmitt, NRDC
Neil Manji, DFG
Dr. Mark Hanna, PhD, PE
Rhonda Reed, NOAA, NMFS
Stephanie Rickabaugh, USFWS

Response
#173

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
e-mail: ds_nahc@pacbell.net



January 15, 2013

Mr. Rodney R. McInnis, Regional Administrator

U.S. Department of Commerce**National Oceanic and Atmospheric Administration****National Marine Fisheries Service – Southwest Region**

501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213

Response # 174

Sent by U.S. Mail

No. Pages: 24

Re: Tribal Consultation per NEPA Requirements under NHPA, Section 106, 36 CFR Part 800 for the "Draft EA for Nonessential Experimental Population Designation for Reintroduction of Central Valleyu Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam Project ;" located in the Central Valley County, California

Dear Mr. McInnis

The Native American Heritage Commission (NAHC) is the California State 'Trustee Agency' pursuant to Public Resources Code §21070 for the protection of California's Native American Cultural Resources. The NAHC is also a 'reviewing agency' for environmental documents prepared under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq*), 36 CFR Part 800.3, .5 and are subject to the Tribal and interested Native American consultation as required by the National Historic Preservation Act, as amended (Section 106) (16 U.S.C. 470; Section 106, [4f], 110 [f] [k], 304). The provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001-3013) and its implementation (43 CFR Part 10.2), and California Government Code §27491 may apply to this project if Native American human remains are inadvertently discovered. Since a General Plan Amendment may be required this project then would be subject to California Government Code Section 65352.3 *et seq*.

The NAHC is of the opinion that the federal standards, pursuant to the above-referenced Acts and the Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq*) are similar to and in many cases more stringent with regard to the 'significance' of historic, including Native American items, and archaeological, including Native American items at least equal to the California Environmental Quality Act (CEQA.). In most cases, federal environmental policy require that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Statement (EIS).

The NAHC Sacred Lands File Inventory of the Native American Heritage Commission is established by the California Legislature pursuant to California Public Resources Code §§5097.94(a) and 5097.96. The NAHC Sacred Lands Inventory is populated by submission to the data by Native American tribes and Native American elders as a repository of *indigenous*

knowledge. In this way it differs from the California and National Register of Historic Places under the jurisdiction of the U.S. Secretary of the Interior.

The NAHC, pursuant to Appendix B of the Guidelines to the California Environmental Quality Act (CEQA) is designated as the agency with expertise in the areas of issues of cultural significance to California Native American communities. Also, in the 1985 California Appellate Court decision (170 Cal App 3rd 604), the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites.

Culturally affiliated tribes are to be consulted to determine possible project impacts pursuant to the National Historic Preservation Act, as amended. Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries once a project is underway. The NAHC recommends as part of 'due diligence', that you also contact the nearest Information Center of the California Historical Resources Information System (CHRIS) of the State Historic Preservation Office (SHPO) for other possible recorded sites in or near the APE (contact the Office of Historic Preservation at 916-445-7000).

Attached is a list of Native American contacts is attached to assist you pursuant to Section 800.2(c)(1)(i) and Section 800.2(c)(2); they may have knowledge of cultural resources in the project area. It is advisable to contact the persons listed and seek to establish a 'trust' relationship with them; if they cannot supply you with specific information about the impact on cultural resources, they may be able to refer you to another tribe or person knowledgeable of the cultural resources in or near the affected project area.

Lead agencies should consider avoidance, in the case of cultural resources that are discovered. A tribe or Native American individual may be the only source of information about a cultural resource; this is consistent with the NHPA (16 U.S.C. 470 *et seq* Sections. 106, 110, and 304) Section 106 Guidelines amended in 2009. Also, recommended for serious consideration are the federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) NAGPRA (25 U.S.C. 3001-3013) as appropriate. In addition, consider the 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes and are supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

NEPA regulations provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery. Even though a discovery may be in federal property, California Government Code §27460 should be followed in the event of an accidental discovery of human remains during any groundbreaking activity; in such cases California Government Code §27491 and California Health & Safety Code §7050.5 will apply and construction cease in the affected area.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Attachment: Native American Contacts list

California Tribal Government List
California Counties
December 31, 2012

Barona Group of the Capitan Grande
Edwin Romero, Chairperson
1095 Barona Road Diegueno
Lakeside , CA 92040
sue@barona-nsn.gov
(619) 443-6612

San Pasqual Band of Mission Indians
Allen E. Lawson, Chairperson
PO Box 365 Diegueno
Valley Center , CA 92082
allenl@sanpasqualband.com
(760) 749-3200

Benton Paiute Reservation
Billie (Jake) Saulque, Chairperson
25669 Highway 6 PMB I Paiute
Benton , CA 93512
numic@qnet.com
(760) 933-2321

Iipay Nation of Santa Ysabel
Virgil Perez, Spokesman
PO Box 130 Diegueno
Santa Ysabel , CA 92070
brandietaylor@yahoo.com
(760) 765-0845

Ewiiapaayp Tribal Office
Robert Pinto Sr., Chairperson
4054 Willows Road Diegueno/Kumeyaay
Alpine , CA 91901
wmicklin@leaningrock.net
(619) 445-6315 - voice

Sycuan Band of the Kumeyaay Nation
Daniel Tucker, Chairperson
5459 Sycuan Road Diegueno/Kumeyaay
El Cajon , CA 92019
ssilva@sycuan-nsn.gov
619 445-2613

La Posta Band of Mission Indians
Gwendolyn Parada, Chairperson
PO Box 1120 Diegueno/Kumeyaay
Boulevard , CA 91905
gparada@lapostacasino.com
(619) 478-2113

Viejas Band of Kumeyaay Indians
Anthony R. Pico, Chairperson
PO Box 908 Diegueno/Kumeyaay
Alpine , CA 91903
jrothauff@viejas-nsn.gov
(619) 445-3810

Manzanita Band of Kumeyaay Nation
Leroy J. Elliott, Chairperson
PO Box 1302 Kumeyaay
Boulevard , CA 91905
ljbirdsinger@aol.com
(619) 766-4930

Alturas Rancheria of Pit River Indians
Philip Del Rosa, Chairperson
P.O. Box 340 Pit River
Alturas , CA 96101 Achomawi - Atsugewi
tiwamarcus@aol.com
disconnected

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This list is applicable only for consultation with Native American tribes under Government Code Section 65352.3. and 65362.4. et seq.

**California Tribal Government List
California Counties
December 31, 2012**

Pit River Tribe of California Juan Venegas, Chairperson 36970 Park Ave Burney , CA 96013 (530) 335-5421	Pit River Achumawi - Atsugewi Wintun	Bishop Paiute Tribe Chad Delgado, Chairperson 50 Tu Su Lane Bishop , CA 93514 (760) 873-3584	Paiute - Shoshone
Big Lagoon Rancheria Virgil Moorehead, Chairperson P. O. Box 3060 Trinidad , CA 95570 vmoorehead@earthlink.net (707) 826-2079	Yurok Tolowa	Blue Lake Rancheria Claudia Brundin, Chairperson P.O. Box 428 Blue Lake , CA 95525 (707) 668-5101	Wiyot Yurok Tolowa
Big Pine Band of Owens Valley Virgil Moose, Chairperson P. O. Box 700 Big Pine , CA 93513 bigpinetribaladmin@earthlink. 760- 938-2003	Owens Valley Paiute	Bridgeport Paiute Indian Colony John L. Glazier, Chairperson -P.O. Box 37 Bridgeport , CA 93517 chair@bridgeportindiancolony. (760) 932-7083	Paiute
Big Sandy Rancheria of Mono Indians Elizabeth Hutchins Kipp, Chairperson P.O. Box 337 / 37302 Auberry , CA 93602 ck@bigsandyrancheria.com (559) 855-4003	Western Mono	Cabazon Band of Mission Indians David Roosevelt, Chairperson 84-245 Indio Springs Parkway Indio , CA 92203-3499 (760) 342-2593	Cahuilla
Big Valley Rancheria of Pomo Indians Anthony Jack, Chairperson 2726 Mission Rancheria Lakeport , CA 95455 ajack@big-valley.net (707) 263-3924	Pomo	Campo Band of Mission Indians Ralph Goff, Chairperson 36190 Church Road, Suite 1 Campo , CA 91906 chairgoff@aol.com (619) 478-9046	Diegueno/Kumeyaay

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California Tribal Government List
California Counties
December 31, 2012

Cedarville Rancheria of N. Paiute Indians
Cherie Rhoades, Chairperson/Cultural Resources
300 West 1st Street Northern Paiute
Alturas, CA 96101
cedranch@citlink.net
(530) 233-3969

Coyote Valley Band of Pomo Indians
John Feliz Jr., Chairperson
P.O. Box 39/ 7901 Hwy 10, Pomo
Redwood Valley, CA 95470
johnfeliz21@aol.com
(707) 485-8723

Chicken Ranch Rancheria of Me-Wuk
Lloyd Mathiesen, Chairperson
P.O. Box 1159 Miwok - Me-wuk
Jamestown, CA 95327
chixrnch@mlode.com
(209) 984-4806

Dry Creek Rancheria of Pomo Indians
Harvey Hopkins, Chairperson
P.O. Box 607 Pomo
Geyserville, CA 95441
(707) 522-4290

Mechoopda Indian Tribe of Chico Rancheria
Dennis E. Ramirez, Chairperson
125 Mission Ranch Blvd Mechoopda Maidu
Chico, CA 95926 Concow
dramirez@mechoopda-nsn.gov
(530) 899-8922 ext 215

Elk Valley Rancheria
Dale Miller, Chairperson
2332 Howland Hill Road Tolowa
Crescent City, CA 95531
dmiller@elk-valley.com
(707) 464-4680

Cloverdale Rancheria of Pomo Indians
Patricia Hermosillo, Chairperson
555 South Cloverdale Blvd., Suite A Pomo
Cloverdale, CA 95425
(707) 894-5775

Fort Bidwell Indian Community of Paiute
Bernold Pollard, Chairperson
P.O. Box 129 Paiute
Fort Bidwell, CA 96112
calindn1977@yahoo.com
(530) 279-6310

Cold Springs Rancheria of Mono Indians
Robert Marquez, Chairperson
P.O. Box 209 Mono
Tollhouse, CA 93667
(559) 855-5043

Fort Independence Community of Paiute
Israel Naylor, Chairperson
P.O. Box 67 Paiute
Independence, CA 93526
Israel@fortindependence.com
(760) 878-5160

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**California Tribal Government List
California Counties
December 31, 2012**

Greenville Rancheria of Maidu Indians
Kyle Self, Chairperson
PO Box 279 Maidu
Greenville, CA 95947
ksself@greenvillerrancheria.com
(530) 284-7990

Jackson Band of Mi-Wuk Indians
Irvin Bo Marks, Chairperson
P.O. Box 1090 Me-Wuk - Miwok - Mi-
Jackson, CA 95642
(209) 223-1935

Grindstone Rancheria of Wintun-Wailaki
Ronald Kirk, Chairperson
P.O. Box 63 Nomlaki
Elk Creek, CA 95939 Wintun (Patwin)
Wailaki
Muimok
(530) 968-5365

Jamul Indian Village
Raymond Hunter, Chairperson
P.O. Box 612 Diegueno/Kumeyaay
Jamul, CA 91935
jamulrez@sctdv.net
(619) 669-4785

Guidiville Band of Pomo Indians
Merlene Sanchez, Chairperson
P.O. Box 339 Pomo
Talmage, CA 95481
admin@guidiville@.net
(707) 462-3682

Karuk Tribe
Russell Attebery, Chairperson
P.O. Box 1016 Karuk / Karok
Happy Camp, CA 96039
(800) 505-2785

Hoopa Valley Tribe
Leonard Masten, Chairperson
P.O. Box 1348 Hoopa - Hupa
Hoopa, CA 95546
leonardmasten@hotmail.com
(530) 625-4211

Maidu Nation
Clara LeCompte
P.O. Box 204 Maidu
Susanville, CA 96130

Hopland Band of Pomo Indians
Shawn Padi, Chairperson
3000 Shanel Road \ 98 Shokowa
Hopland, CA 95449 Sokow
spadi@hoplandtribe.com Shanel
(707) 472-2100, Ext 1405 Pomo

Colusa Indian Community Council
Daniel Gomez, Chairman
3730 Highway 45 Wintun (Patwin)
Colusa, CA 95932
(530) 458-8231

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**California Tribal Government List
California Counties
December 31, 2012**

Paskenta Band of Nomlaki Indians
Andrew Freeman, Chairperson
PO Box 398
Orland, CA 95963
office@paskenta.org
(530) 865-2010

Nomlaki
Wintun

Manchester-Point Arena Rancheria
Nelson Pinola, Chairperson
P.O. Box 623
Point Arena, CA 95468t
manptarena@hughes.net
(707) 882-2788

Pomo

North Fork Mono Tribe
Ron Goode, Chairperson
13396 Tollhouse Road
Clovis, CA 93619
rwgoode911@hotmail.com
(559) 299-3729 Home
(559) 355-1774 - cell

Mono

Mesa Grande Band of Mission Indians
Mark Romero, Chairperson
P.O. Box 270
Santa Ysabel, CA 92070
mesagrandeband@msn.com
(760) 782-3818

Diegueno

Laytonville Rancheria/Cahto Indian Tribe
Rochard Smith, Chairperson
P.O. Box 1239
Laytonville, CA 95454
Chairwoman @cahto.org
(707) 984-6197

Cahto
Kato
Pomo

Middletown Rancheria of Pomo Indians
Jose Simon III, Chairperson
P.O. Box 1035
Middletown, CA 95461
(707) 987-3670

Pomo

Los Coyotes Band of Mission Indians
Shane Chapparosa, Chairman
P.O. Box 189
Warner, CA 92086
(760) 782-0711

Cahuilla

Mooretown Rancheria of Maidu Indians
Gary Archuleta, Chairperson
#1 Alverda Drive
Oroville, CA 95966
frontdesk@mooretown.org
(530) 533-3625

Maidu
KonKow / Concow

Lytton Rancheria of California
Marjorie Mejia, Chairperson
437 Aviation Blvd
Santa Rosa, CA 95403
margiemejia@aol.com
(707) 575-5917

Pomo

North Fork Rancheria
Elaine (Judy) Fink, Chairperson
PO Box 929
North Fork, CA 93643
NFRancheria@netptc.net
(559) 877-2461

Mono

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**California Tribal Government List
California Counties
December 31, 2012**

Pala Band of Mission Indians
Historic Preservation Office/Shasta Gaughen
35008 Pala Temecula Road, PMB50 Luiseno
Pala , CA 92059 Cupeno
PMB 50
(760) 891-3515
sgaughen@palatribe.com

Quartz Valley Indian Community
Aaron Peters, Chairperson
13601 Quartz Valley Road Karuk
Fort Jones , CA 96032 Shasta
tribalchair@qvir.com Upper Klamath
(530) 468-5907

Pauma & Yuima Reservation
Randall Majel, Chairperson
P.O. Box 369 Luiseno
Pauma Valley , CA 92061
paumareservation@aol.com
(760) 742-1289

Ramona Band of Cahuilla Mission Indians
Joseph Hamilton, Chairman
P.O. Box 391670 Cahuilla
Anza , CA 92539
admin@ramonatribe.com
(951) 763-4105

Picayune Rancheria of Chuckchansi
Reggie Lewis, Chairperson
46575 Road 417 Chuckchansi / Yokut
Coarsegold , CA 93613
(559) 683-6633
(559) 683-0599-Fax

Redwood Valley Rancheria of Pomo
Elizabeth Hansen, Chairperson
3250 Road I Pomo
Redwood , CA 95470
redwoodres@pacific.net
(707)485-0361

Pinoleville Pomo Nation
Leona Willams, Chairperson
500 B Pinoleville Drive Pomo
Ukiah , CA 95482
tcouncil@pinoleville-nsn.gov
(707) 463-1454

Resighini Rancheria/Coast Indian Community
Donald McCovey, Chairperson
P.O. Box 529 Yurok
Klamath , CA 95548
k.dowd6@verizon.net
(707) 482-2431

Potter Valley Tribe
Salvador Rosales, Chairperson
2251 South State Street Pomo
Ukiah , CA 95482
pottervalleytribe@comcast.net
(707) 462-1213

Roaring Creek Rancheria
PO Box 52 Pit River
Montgomery 96065
, CA
(530) 335-5421

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**California Tribal Government List
California Counties
December 31, 2012**

Robinson Rancheria of Pomo Indians
Tracy Avila, Chairperson
PO Box 4015 Pomo
Nice, CA 95464
tavilabasket@yahoo.com
(707) 275-0527

Santa Rosa Rancheria
Rueben Barrios Sr., Chairperson
P.O. Box 8 Tache
Lemoore, CA 93245 Tachi
Yokut

(559) 924-1278

Bear River Band of Rohnerville Rancheria
Leonard Bowman, Jr., Chairperson
27 Bear River Drive Wiyot
Loleta, CA 95551 Mattole
lbowman@bearriver.com
(707) 733-1900

Santa Ynez Band of Mission Indians
Vincent Armenta, Chairperson
P.O. Box 517 Chumash
Santa Ynez, CA 93460
varmenta@santaynezchumash.org
(805) 688-7997

Round Valley Reservation/Covelo Indian Community
Kenneth Wright, President
77826 Covelo Road Yuki ; Nomlaki
Covelo, CA 95428 Pit River
Pomo
Concow
Wailaki; Wintun

(707) 983-6126

Scotts Valley Band of Pomo
Donald Arnold, Chairperson
301 Industrial Ave Pomo
Lakeport, CA 95453 Wailaki
brownbearda@hotmail.com
707-263-4220

Yocha Dehe Wintun Nation
Marshall McKay, Chairperson
P.O. Box 18 Wintun (Patwin)
Brooks, CA 95606
(530) 796-3400

Sherwood Valley Rancheria of Pomo
Michael Fitzgerral, Chairperson
190 Sherwood Hill Drive Pomo
Willits, CA 95490
svradministrator@sbcglobal.net

(707) 459-9690

San Manuel Band of Mission Indians
Carla Rodriguez, Chairwoman
26569 Community Center Drive Serrano
Highland, CA 92346
(909) 864-8933
(909) 864-3724 - FAX

Smith River Rancheria of California
Kara Brundin-Miller, Chairperson
140 Rowdy Creek Road Tolowa
Smith River, CA 95567
kara.miller@tolowa-nsn.gov
(707) 487-9255

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**California Tribal Government List
California Counties
December 31, 2012**

Soboba Band of Mission Indians
Rosemary Morillo, Chairperson; Attn: Carrie Garcia
P.O. Box 487 Luiseno
San Jacinto , CA 92581
carrieg@soboba-nsn.gov
(951) 654-2765

Table Mountain Rancheria
Leann Walker Grant, Chairperson
P.O. Box 410 Yokuts
Friant , CA 93626-0177
(559) 822-2587

Stewarts Point Rancheria
Emilio Valencia, Chairperson
1420 Guerneville Road, Ste 1 Pomo
Santa Rosa , CA 95403
Emilio@stewartspoint.com

(707) 591-0580-voice

Timbisha Shoshone Tribe
George Gholoson, Chairperson
785 North Main Street, Suite Q Western Shoshone
Bishop , CA 93514
(760) 873-9003

Elem Indian Colony of Pomo
Nathan Brown, Chairperson
PO Box 757 Southeastern Pomo
Clearlake Oaks , CA 95423

Torres-Martinez Desert Cahuilla Indians
Mary Resvaloso, Chairperson
PO Box 1160 Cahuilla
Thermal , CA 92274
mresvaloso@torresmartinez.
(760) 397-0300

Susanville Indian Rancheria
Stacy Dixon, Chairperson
745 Joaquin Street Paiute
Susanville , CA 96130 Maidu
sirtribalchair@citlink.net Pit River
(530) 257-6264 Washoe

Trinidad Rancheria/Cher-Ae Heights Indian Comm.
Garth Sundberg Sr., Chairperson
P.O. Box 630 Yurok
Trinidad , CA 95570 Miwok
susie@trinidadrancheria.com Tolowa
(707) 677-0211

Wiyot Tribe
Ted Hernandez, Chairperson
1000 Wiyot Drive Wiyot
Loleta , CA 95551
(707) 733-5055

Tule River Indian Tribe
Neil Peyron, Chairperson
P.O. Box 589 Yokuts
Porterville , CA 93258
chairman@tulerivertribe-nsn.
(559) 781-4271

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California Tribal Government List
California Counties
December 31, 2012

Twenty-Nine Palms Band of Mission Indians
Darrell Mike, Chairperson
46-200 Harrison Place
Coachella , CA 92236 Chemehuevi
tribal-epa@worldnet.att.net
(760) 775-5566
(760) 808-0409 - cell - EPA

Chemehuevi Reservation
Edward Smith, Chairperson
P.O. Box 1976 Chemehuevi
Chemehuevi Valley , CA 92363 Chemehuevi
chair1cit@yahoo.com
(760) 858-4301

Upper Lake Band of Pomo
Sherry Treppa, Chairperson
P.O. Box 516 Pomo
Upper Lake , CA 95485
(707) 275-0734

The Federated Indians of Graton Rancheria
Greg Sarris, Chairperson
6400 Redwood Drive, Ste 300 Coast Miwok
Rohnert Park , CA 94928 Southern Pomo
coastmiwok@aol.com
707-566-2288

Yurok Tribe of California
Thomas O'Rourke, Chairperson
PO Box 1027 Yurok
Klamath , CA 95548
torourke@yuroktribe.nsn.us
(707) 482-1350

Wilton Rancheria
Andrew Franklin, Chairperson
9300 W. Stockton, Suite 200 Miwok
Elk Grove , CA 95758
916-683-6000

Fernandeno Tataviam Band of Mission Indians
Ronnie Salas, Cultural Preservation Department
1019 - 2nd Street, Suite #1 Fernandeno
San Fernando , CA 91340 Tataviam
rsalas@tataviam-nsn.gov
(818) 837-0794 Office

Yurok Tribe of California THPO
Robert McConnell
HC 67 P.O. Box 196, Highway Yurok
Hoopa , CA 95546
rmccconnell@yuroktribe.nsn.us
(707) 498-2536
(530) 625-4130 x1629

Barbareno/Ventureno Band of Mission Indians
Julie Lynn Tumamait-Stennslie, Chairwoman
365 North Poli Ave Chumash
Ojai , CA 93023
jtumamait@sbcglobal.net
(805) 646-6214

Fort Mojave Indian Tribe
Timothy Williams, Chairperson
500 Merriman Ave Mojave
Needles , CA 92363
(760) 629-4591

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**California Tribal Government List
California Counties
December 31, 2012**

Juaneno Band of Mission Indians Acjachemen Nation
David Belardes, Chairperson
32161 Avenida Los Amigos Juaneno
San Juan Capistrano , CA 92675
chiefdavidbelardes@yahoo. m
(949) 493-4933 - home

Noyo River Indian Community
Harriet L. Stanley-Rhoades
P.O. Box 91 North Coastal Pomo
Fort Bragg , CA 95437
noyojetty1@earthlink.net
(707) 964-2647

Mono Lake Indian Community
Charlotte Lange, Chairperson
P.O. Box 117 Mono
Big Pine , CA 93513 Northern Paiute
clange2008@hotmail.com
(760) 938-1190

United Auburn Indian Community of the Auburn Rancheria
David Keyser, Chairperson
10720 Indian Hill Road Maidu
Auburn , CA 95603 Miwok
530-883-2390

Wintu Tribe of Northern California
Kelli Hayward
PO Box 995 Wintu
Shasta Lake , CA 96019
wintu_tribe@hotmail.com

Coastanoan Rumsen Carmel Tribe
Tony Cerda, Chairperson
240 E, 1st Street Ohlone/Costanoan
Pomona , CA 91766
rumsen@aol.com
(909) 524-8041 Cell

Nor-Rel-Muk Nation
Marilyn Delgado, Chairperson
PO Box 1967 Wintu
Weaverville , CA 96093
norermuk@com-pair.net
(530) 623-4940

Wadatkuta Band of the Northern Paiute of the Honey Lake Valley
Harold Dixon, Chairperson
PO Box 541 Northern Paiute
Susanville , CA 96130
(916) 257-4908

Tsungwe Council
Paul Ammon, Chairperson
P.O. Box 373 Southern Hoopa
Salyer , CA 95563
(530) 629-3356
530-629-4758 message

Klamath Tribe
Gary Frost
PO Box 436 Klamath
Chiloquin , OR 97624 Modoc
(541) 783-2219

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**California Tribal Government List
California Counties
December 31, 2012**

Kitanemuk & Yowlumne Tejon Indians
Delia Dominguez, Chairperson
115 Radio Street Yowlumne
Bakersfield , CA 93305 Kitanemuk
deedominguez@juno.com
(626) 339-6785

Salinan Tribe of Monterey, San Luis Obispo Counties
John W. Burch, Traditional Chairperson
14650 Morro Road Salinan
Atascadero , CA 93422 Chumash
salinantribe@aol.com
805-460-9202
805 235-2730 Cell

Kwaaymii Laguna Band of Mission Indians
Carmen Lucas
P.O. Box 775 Diegueno - Kwaaymii
Pine Valley , CA 91962
(619) 709-4207

Colorado River Indian Tribe
Eldred Enas ,Chairman; Ginger Scott, Museum
26600 Mojave Road Mojave
Parker , AZ 85344 Chemehuevi
crit.museum@yahoo.com
(928) 669-9211-Tribal Office
(928) 669-8970 ext 21

Inaja Band of Mission Indians
Rebecca Osuna, Chairman
2005 S. Escondido Blvd. Diegueno
Escondido , CA 92025
(760) 737-7628

San Fernando Band of Mission Indians
John Valenzuela, Chairperson
P.O. Box 221838
Newhall , CA 91322
tsen2u@hotmail.com
(661) 753-9833 Office
(760) 885-0955 Cell
(760) 949-2103 Home

Fernandeño
Tataviam
Serrano
Vanyume
Kitanemuk

Ione Band of Miwok Indians
Yvonne Miller, Chairperson
PO Box 699
Plymouth , CA 95669
(209) 274-6753

Miwok

Ohlone/Coastanoan-Esselen Nation
Louise Miranda-Ramirez, Chairperson
PO Box 1301
Monterey , CA 93942
ramirez.louise@yahoo.com
408-629-5189
408-205-7579 - cell

Esselen
Ohlone/Costanoan

Fort Yuma Quechan Indian Nation
Keeny Escalanti, Sr., President
PO Box 1899
Yuma , AZ 85366
qitpres@quechantribe.com
(760) 572-0213

Quechan

Gabrieleno/Tongva San Gabriel Band of Mission
Anthony Morales, Chairperson
PO Box 693
San Gabriel , CA 91778
GTTribalcouncil@aol.com
(626) 286-1632
(626) 286-1758 - Home
(626) 483--3564 cell

Gabrielino Tongva

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**California Tribal Government List
California Counties
December 31, 2012**

Dunlap Band of Mono Indians
Benjamin Charley, Sr., Chairperson
Box 45 Mono
Dunlap , CA 93621
(559) 338-2545

Cortina Band of Indians
Charlie Wright, Chairperson
PO Box 1630 Wintun / Patwin
Williams , CA 95987
(530) 473-3274 - Voice
(530) 473-3190 - Voice

Amah Mutsun Tribal Band
Valentin Lopez, Chairperson
PO Box 5272 Ohlone/Costanoan
Galt , CA 95632
vlopez@amahmutsun.org
916-743-5833

Buena Vista Rancheria
Rhonda Morningstar Pope, Chairperson
1418 20th Street, Suite 200 Me-Wuk / Miwok
Sacramento , CA 95811
rhonda@buenavistatribe.com
916 491-0011

Amah/Mutsun Tribal Band
Irene Zwierlein, Chairperson
789 Canada Road Ohlone/Costanoan
Woodside , CA 94062
(650) 851-7747 - Home
650-400-4806 cell preferred

KonKow Valley Band of Maidu
Patsy Seek, Chairperson
1706 Sweem Street KonKow / Concow
Oroville , CA 95965 Maidu
(530) 533-1504

Costanoan Ohlone Rumsen-Mutsen Tribe
Patrick Orozco
644 Peartree Drive Ohlone/Costanoan
Watsonville , CA 95076
yanapvoic@earthlink.net
(831) 728-8471

Xolon Salinan Tribe
Johnny R Eddy Jr
3179 Garrity Way #734 Salinan
Richmond , CA 94806
831-210-9771

Santa Rosa Band of Mission Indians
John Marcus, Chairman
P.O. Box 391820 Cahuilla
Anza , CA 92539
(951) 659-2700
(951) 659-2228 Fax

Honey Lake Maidu
Ron Morales, Chairperson
1101 Arnold Street Maidu
Susanville , CA 96130
honeylakemaidu@honeylakem
(530) 257-3275

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California Tribal Government List
California Counties
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Augustine Band of Cahuilla Mission Indians
Mary Ann Green, Chairperson
P.O. Box 846 Cahuilla
Coachella , CA 92236
(760) 398-4722

Redding Rancheria
Jason Hart, Chairperson
2000 Redding Rancheria Road Wintu
Redding , CA 96001 Pit River
Yana
(530) 225-8979

California Valley Miwok Tribe
Silvia Burley, Chairperson
10601 N Escondido PL Miwok
Stockton , CA 95212
office@cvmnt.net
209-931-4567

Gabrielino Tongva Nation
Sam Dunlap, Cultural Resources Director
P.O. Box 86908 Gabrielino Tongva
Los Angeles , CA 90086
samdunlap@earthlink.net
(909) 262-9351 - cell

Tejon Indian Tribe
Katherine Montes Morgan, Chairperson
1731 Hasti-acres Drive, Suite Yowlumne
Suite 108 , Kitanemuk
Bakersfield, CA 93309 Kawaiisu
661-758-2303
kmorgan@bak.rr.com

Juaneno Band of Mission Indians Acjachemen Nation
Anthony Rivera, Chairman
31411-A La Matanza Street Juaneno
San Juan Capistrano , CA 92675-2674
arivera@juaneno.com
(949) 488-3484
(949) 488-3294 - FAX

Dumna Wo-Wah Tribal Government
Robert Ledger SR., Tribal Chairperson
2216 East Hammond Street Dumna/Foothill
Fresno , CA 93602 Mono
ledgerrobert@ymail.com
559-519-1742 - office

North Valley Yokuts Tribe
Katherine Erolinda Perez
PO Box 717 Ohlone/Costanoan
Linden , CA 95236 Northern Valley Yokuts
Bay Miwok
(209) 887-3415

Winnemem Wintu Tribe
Caleen Sisk-Franco, Tribal Chair
14840 Bear Mountain Road Wintu
Redding , CA 96003
winnemem@hotmail.com

T si-Akim Maidu
Eileen Moon, Vice Chairperson
1239 East Main St. Maidu
Grass Valley , CA 95945
530-274-7497

(530) 275-2737

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California Tribal Government List
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Coastal Band of the Chumash Nation
Toni Cordero, Chairwoman
P.O. Box 4464 Chumash
Santa Barbara , CA 93140
cordero44@charter.net
805-964-3447

Southern Sierra Miwuk Nation
Anthony Brochini, Chairperson
P.O. Box 1200 Miwok
Mariposa , CA 95338 Pauite
tony_brochini@nps.gov Northern Valley Yokut
209-628-0085 cell

Strawberry Valley Rancheria
Cathy Bishop, Chairperson
PO Box 667 Maidu
Marysville , CA 95901 Miwok
catfrmsac2@yahoo.com
916-501-2482

Tuolumne Band of Me-Wuk
Kevin Day, Chairperson
P.O. Box 699 Me-Wuk - Miwok
Tuolumne , CA 95379
receptionist@mlode.com
(209) 928-3475 - Tribal Office

Lower Lake Rancheria
Daniel Beltran, Chairperson
P.O. Box 3162 Pomo
Santa Rosa , CA 95402
(707) 431-1908

Washoe Tribe of Nevada and California
Wanda Batchelor, Chairperson
919 Highway 395 South Washoe
Gardnerville , NV 89410
ktrovato@washoetribe.us
775-265-4191

Kern Valley Indian Council
Julie Turner, Secretary
P.O. Box 1010 Southern Paiute
Lake Isabella , CA 93240 Kawaiisu
Tubatulabal
Koso
Yokuts

Table Mountain Rancheria
Bob Pennell, Cultural Resources Director
P.O. Box 410 Yokuts
Friant , CA 93626-0177
(559) 325-0351
(559) 217-9718 - cell

Modoc Tribe of Oklahoma
John Ballard, Environmental Director
515 G Street Southeast Modoc
Miami , OK 74354
modoc-oeg@cableone.net
(918) 542-1190

Kings River Choinumni Farm Tribe
John Davis, Chairman
1064 Oxford Avenue Foothill Yokuts
Clovis , CA 93612-2211 Choinumni
(559) 307-6430

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California Tribal Government List
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Rincon Band of Mission Indians
Bo Mazzetti, Chairperson
P.O. Box 68 Luiseno
Valley Center , CA 92082
bomazzetti@aol.com
(760) 749-1051

Berry Creek Rancheria of Maidu Indians
James Edwards, Chairperson
5 Tyme Way Tyme Maidu
Oroville , CA 95966
gmix@berrycreekrancheria.com
(530) 534-3859

Juaneno Band of Mission Indians
Alfred Cruz, Cultural Resources Coordinator
P.O. Box 25628 Juaneno
Santa Ana , CA 92799
alfredgcruz@sbcglobal.net
714-998-0721
714-998-0721 - FAX

Morongo Band of Mission Indians
Robert Martin, Chairperson
12700 Pumarra Road Cahuilla
Banning , CA 92220 Serrano
(951) 849-8807
(951) 755-5200

San Luis Rey Band of Mission Indians
Tribal Council
1889 Sunset Drive Luiseno
Vista , CA 92081
760-724-8505

Shingle Springs Band of Miwok Indians
Nicholas Fonseca, Chairperson
P.O. Box 1340 Miwok
Shingle Springs , CA 95682 Maidu
nfonseca@ssband.org
(530) 676-8010

Big Pine Band of Owens Valley THPO
Bill Helmer, Tribal Historic Preservation Officer
P.O. Box 700 Paiute
Big Pine , CA 93513
amargosa@aol.com
(760) 938-2003
(760) 937-3331 - cell

Pechanga Band of Mission Indians
Mark Macarro, Chairperson
P.O. Box 1477 Luiseno
Temecula , CA 92593
(951) 770-6100
hlaibach@pechanga-nsn.gov

Agua Caliente Band of Cahuilla Indians
Jeff Grubbe, Chairperson
5401 Dinah Shore Drive Cahuilla
Palm Springs , CA 92262
lfreogoz@aguacaliente-nsn.gov
(760) 325-3400

Walker River Reservation
Melanie McFalls, Chairperson
P.O. Box 220 Northern Paiute
Schurz , NV 89427
775-773-2306

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California Tribal Government List
California Counties
December 31, 2012

Wuksache Indian Tribe/Eshom Valley Band
Kenneth Woodrow, Chairperson
1179 Rock Haven Ct. Foothill Yokuts
Salinas, CA 93906 Mono
kwood8934@aol.com Wuksache
831-443-9702

Ipay Nation of Santa Ysabel
Clint Linton, Director of Cultural Resources
P.O. Box 507 Diegueno/Kumeyaay
Santa Ysabel, CA 92070
cjlinton73@aol.com
(760) 803-5694

La Jolla Band of Mission Indians
Lavonne Peck, Chairwoman
22000 Highway 76 Luiseno
Pauma Valley, CA 92061
rob.roy@lajolla-nsn.gov
(760) 742-3796

Chumash Council of Bakersfield
Arianne Garcia, Chairperson
P.O. Box 902 Chumash
Bakersfield, CA 93302
chumashtribe@sbcglobal.net
(661) 836-0486

Serrano Nation of Mission Indians
Goldie Walker, Chairwoman
P.O. Box 343 Serrano
Patton, CA 92369
(909) 528-9027 or
(909) 528-9032

Agua Caliente Band of Cahuilla Indians THPO
Patricia Tuck, Tribal Historic Perservation Officer
5401 Dinah Shore Drive Cahuilla
Palm Springs, CA 92264
ptuck@augacaliente-nsn.gov
(760) 699-6907

Nashville-El Dorado Miwok
Cosme Valdez, Interim Chief Executive Officer
PO Box 580986 Miwok
Elk Grove, CA 95758
valdezcom@comcast.net
916-429-8047 voice

Kern Valley Indian Council
Robert Robinson, Co-Chairperson
P.O. Box 401 Tubatulabal
Weldon, CA 93283 Kawaiisu
brobinson@iwvisp.com Koso
(760) 378-4575 (Home) Yokuts
(760) 549-2131 (Work)

Enterprise Rancheria of Maidu Indians
Glenda Nelson, Chairperson
2133 Monta Vista Ave Maidu
Oroville, CA 95966
info@enterpriserancheria.com
(530) 532-9214

Tubatulabals of Kern Valley
Robert L. Gomez, Jr., Tribal Chairperson
P.O. Box 226 Tubatulabal
Lake Isabella, CA 93240
(760) 379-4590

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**California Tribal Government List
California Counties
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Northern Chumash Tribal Council Fred Collins, Spokesperson 67 South Street San Luis Obispo , CA 93401 fcollins@northernchumash.org	Chumash	Juaneño Band of Mission Indians Sonia Johnston, Tribal Chairperson P.O. Box 25628 Santa Ana , CA 92799 sonia.johnston@sbcglobal.net 714-323-8312	Juaneno
--	---------	---	---------

Muwekma Ohlone Indian Tribe of the SF Bay Area Rosemary Cambra, Chairperson PO Box 360791 Milpitas , CA 95036 muvekma@muvekma.org 408-205-9714	Ohlone / Costanoan	Shasta Nation Roy V. Hall, Jr, Chairperson P.O. Box 1054 Yreka , CA 96097 (530) 468-2314	Shasta
---	--------------------	--	--------

Bishop Paiute Tribe THPO Raymond Andrews, THPO 50 Tu Su Lane Bishop , CA 93514 (760) 873-8435 ext 250 (760) 920-0357 - cell - cell gwest@ovcdc.com	Paiute - Shoshone	Cahuilla Band of Indians Luther Salgado, Chairperson PO Box 391760 Anza , CA 92539 tribalcouncil@cahuilla.net 915-763-5549	Cahuilla
--	-------------------	---	----------

Smith River Rancheria of California THPO Suntayea Steinruck 140 Rowdy Creek Road Smith River , CA 95567 (707) 487-9255	Tolowa	Calaveras Band of Mi-Wuk Indians Charles Wilson, Chairperson 546 Bald Mountain Road West Point , CA 95255 209-293-2189	Mi-Wuk
--	--------	--	--------

T'Si-akim Maidu Grayson Coney, Cultural Director P.O. Box 1316 Colfax , CA 95713 akimmaidu@att.net (530) 383-7234	Maidu	The Ohlone Indian Tribe Andrew Galvan PO Box 3152 Fremont , CA 94539 chochenyo@AOL.com (510) 882-0527 - Cell	Ohlone/Costanoan Bay Miwok Plains Miwok Patwin
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This list is current only as of the date of this document.

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This list is applicable only for consultation with Native American tribes under Government Code Section 65352.3. and 65362.4. et seq.

California Tribal Government List
California Counties
December 31, 2012

Juaneno Band of Mission Indians Acjachemen Nation
Joyce Perry, Representing Tribal Chairperson
4955 Paseo Segovia Juaneno
Irvine , CA 92612
949-293-8522

Honey Lake Maidu
Paul Garcia, Chairperson
7029 Polvadero Drive Maidu
San Jose , CA 95119
drinkwiz@sbcglobal.net
408-499-1565

Gabrielino-Tongva Tribe
Linda Candelaria, Chairwoman
1875 Century Pk East #1500
Los Angeles , CA 90067
palmsprings9@yahoo.com Gabrielino
626-676-1184- cell
(310) 587-0170 - FAX

Gabrieleno Band of Mission Indians
Andrew Salas, Chairperson
P.O. Box 393
Covina , CA 91723
(626) 926-4131 Gabrielino
gabrielenoindians@yahoo.com

Yurok Tribe of California
Buffy McQuillen, NAGPRA Coordinator
PO Box 1027 Yurok
Klamath , CA 95548
buffy@yuroktribe.nsn.us
(707) 482-1350
(707) 954-5355

Lone Pine Paiute Shoshone Reservation
Mary Wuester, Chairman
P.O. Box 747
Lone Pine , CA 93545 Paiute
(760) 876-1034 Shoshone
760-876-8302

Traditional Choinumni Tribe
David Alvarez, Chairperson
2415 E. Houston Avenue
Fresno , CA 93720
davealvarez@sbcglobal.net Choinumni
(559) 292-5057 - Fax
(559) 323-6231
(559) 217-0396 - cell

Indian Canyon Mutsun Band of Costanoan
Ann Marie Sayers, Chairperson
P.O. Box 28 Ohlone/Costanoan
Hollister , CA 95024
ams@indiancanyon.org
831-637-4238

Manzanita Band of the Kumeyaay Nation
Leroy J. Elliott, Chairperson
P.O. Box 1302
Boulevard , CA 91905 Diegueno/Kumeyaay
ljbirdsinger@aol.com
(619) 766-4930
(619) 766-4957 - FAX

Calaveras Band of Mi-Wuk Indians
Debra Grimes, Cultural Res. Specialist
PO Box 1015 Mi-Wuk
West Point , CA 95255
Dmiwuk@aol.com
209-770-4137
209-470-8688

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**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

DEC 05 2012

JAN 11 2013

Dear Interested Party:

The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NMFS), under the National Environmental Policy Act (NEPA), will be making available for public review and comment the *Draft Environmental Assessment (EA) for Nonessential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam*. A Notice of Availability (NOA) of the Draft EA is expected to be published in the *Federal Register* by January 15, 2013.

As part of efforts by NMFS to reach out to potentially interested parties prior to the NOA being published, we would like to give you the opportunity to request copies of the EA so that you may begin your review as soon as possible after publication of the NOA. Once the NOA is published, the documents will also be accessible electronically through the NMFS Southwest Region websites: <http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm> or <http://swr.nmfs.noaa.gov/nepa.htm>

Upon publication of the NOA, the EA will be available for review upon written request or by appointment in the following office: the Protected Resources Division, NMFS, 650 Capitol Mall, Suite 5-100, Sacramento, CA 9581.

This EA is for the designation of an Endangered Species Act section 10(j) nonessential experimental population and reintroduction of spring-run Chinook. It includes information on the geographic location and the associated take provisions associated with the nonessential population designation, and the effects associated with the release of spring-run Chinook in the San Joaquin River.

If you would like to express your interest, have any questions or need further information, please contact Ms. Elif Fehm-Sullivan, National Marine Fisheries Service at (916) 930-3723 or elif.fehm-sullivan@noaa.gov.

Sincerely,

for Rodney R. McInnis
Regional Administrator



NOAA
National Marine Fisheries Service
Announces:



Public Workshops
Spring-run Salmon Experimental
Population Designation

All are invited to discuss the proposed rule for designation of an experimental population and section 4(d) take provisions for reintroduction of Central Valley spring-run Chinook salmon to the San Joaquin River below Friant Dam and the Draft Environmental Assessment for the Proposed Action

- **Fresno: January 29, 2013; 5:30 pm – 7:30 pm**
Fresno Metropolitan Flood Control District Board Room, 5469 E. Olive Avenue, Fresno, CA 93727. (Public should park in the front parking area and enter the door located on the west side of the front building. The rear parking closes 5:30 with no exit after that time.)

- **Los Banos: January 30, 2013; 2:00 – 4:00 pm**
Los Banos Community Center, 645 7th Street, Los Banos, California 93635

- **Chico: February 5, 2013; 5:30 pm – 7:30 pm**
Chico Area Recreation and Park District
545 Vallombrosa Avenue, Chico, California 95926

NMFS Website:

<http://swr.nmfs.noaa.gov/sirrestorationprogram/salmonreintroduction.htm>

If you have questions or comments please contact Elif Fehm-Sullivan at:
Elif.Fehm-Sullivan@noaa.gov or 916-930-3723



March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: *Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"*

Dear Ms. Reed:

Paramount Farming Company, as agent for Paramount Land Company, LLC and Paramount Pomegranate Orchards ("Paramount") who are landowners along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Sincerely yours,

William D. Phillipmore

Executive Vice President

Response
#175

Mill Creek Conservancy

40652 Highway 36 E
Mill Creek, CA 96061

Elif Fehm-Sullivan
Protected Resources Division
National Marine Fisheries Service
650 Capitol Mall # 5-100
Sacramento, CA 95814-4706
SJR Spring.Salmon@noaa.gov

February 5, 2013

Subject: Continued opposition and concerns of any use of wild Mill Creek Spring-run Chinook Salmon for the San Joaquin River Settlement Agreement Project

Dear Ms. Fehm-Sullivan,

The Mill Creek Conservancy letters and public comments of two years ago opposing the use of any form of Mill Creek wild Spring-run Chinook Salmon remain valid and unchanged. It is disappointing that our legitimate expressed concerns were not addressed in the Draft Environmental Assessment.

Due to the current high risk of extinction, Mill Creek spring-run stock should be removed from consideration in the All Donor Stock Sources Alternative in establishing the SJ experimental population.

Response #
176

2. The Draft EA needs to reference populations levels and rates of recovery warranting reclassifying wild spring-run populations as stable with a low risk of extinction.

Response # 177

3. Once habitat conditions in the San Joaquin can sustain populations of spring run, reassess whether wild stream-type salmon are appropriate as a genetic source.

Response # 178

4. At such time that wild spring run populations increase and stabilize and the habitat in the San Joaquin can support Mill Creek genetic stock, local shareholders will participate in the Section 10(a)(1)(A) permitting process including stock selection and collection methods.

Response # 179

Acceptable first actions for the SJRRP:

Proceed with SJRRP projects proposed to improve habitat, flows and water management.

Assess salmon population response using introduced surplus Central Valley hatchery fall-run and spring-run Chinook.

Monitor the volitional re-colonization of wild spring-run Chinook.

All of these tasks may take decades to determine if Spring Run Chinook salmon could survive in the lower reaches of the San Joaquin River. The DEA does not address the impacts of sending wild Mill Creek Spring-run Chinook salmon to their sure death at the face of Friant Dam. The average population of Mill Creek Spring-run Chinook Salmon over the past 5 years is 306. It is a misuse of public funding to find a legal loophole to take endangered Mill Creek Salmon from their natal stream. The DEA is very distressing example of legal gymnastics being performed by a public agency to avoid upholding the existing law that is suppose to protect the Mill Creek Salmon.

Response #
180

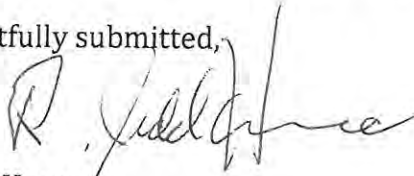
The Mill Creek Conservancy will make formal written comments however it is very disappointing how this amply public funded project has clouded the judgment of biologist that should be concerned about the health and welfare of the existing salmon stocks that have distinct and adequate habitat, namely the Mill Creek Salmon.

Response # 181

We appreciate that your agency is trying to explore alternatives, however use of the Mill Creek wild Spring Run Chinook salmon is not appropriate given the numerous risk to our endangered from being relocated to a hot stretch of the San Joaquin River

Response # 182

Respectfully submitted,



R. Judd Hanna

Secretary, Mill Creek Conservancy

Response # 183

March 4, 2013

Ms. Elizabeth Reed
National Marine Fisheries Service
Federal Resources Division
Central Valley Office
400 Capitol Mall, Suite 100
Sacramento, CA 95834

Email: elizabeth.reed@noaa.gov

**Re: Comments of the San Joaquin River Exchange Contractors Water Authority and
San Joaquin River Resource Management Coalition to the November 2012 "Deep
Environmental Assessment for Two Dammed Experimental Population Reintroductions
and 100 Take Permits for Reintroduction of Central Valley Spring Run Chinook
Salmon to the San Joaquin River below Folsom Dam"**

Dear Ms. Reed:

I appreciate your letter regarding the San Joaquin River. I am pleased to see NEP and NEQ take setting and environmental review process for the dam removal project. Please include the letter and comments for the record in this environmental review process.

I hereby join to the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligations to my administrative members. Whether or not I choose to use all issues raised by the Exchange Contractors, RMC, or others will be determined at a later time.

Sincerely yours,

Name
Address
City, State, Zip


David H. Clayton
California, CA 95317

LAW OFFICES OF
LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

DIANE V. RATHMANN
ALFRED L. WHITEHURST
THOMAS J. KEENE

1820 MARGUERITE STREET
P. O. BOX 156
DOS PALOS, CA 93620
(209) 392-2141
FAX (209) 392-3964

654 K STREET
P. O. BOX 1364
LOS BANOS, CA 93635
(209) 826-4911
FAX (209) 826-4766

PHILLIP R. McMURRAY
SHANTELE ANDREWS-MARGASON

JAMES E. LINNEMAN, OF COUNSEL
EUGENE J. VIERRA, OF COUNSEL

L. M. LINNEMAN (1902-1983)
JOSEPH B. BURGESS (1902-1990)
JAY H. WARD (1942-1995)
C. E. VAN ATTA (1919-1997)
JESS P. TELLES, JR. (1920-2004)

312 WEST 19TH STREET
P. O. BOX 2263
MERCED, CA 95344
(209) 723-2137
FAX (209) 723-0899

March 4, 2013

Elif Fehm-Sullivan, Fisheries Biologist
Protected Resources Division
Southwest Region
National Marine Fisheries Service
650 Capitol Mall Suite 5-100
Sacramento, California 95814

Re: Draft Environmental Assessment for Nonessential Experimental Population
Designation and 4(d) Take Provisions for Reintroduction of Central Valley
Spring-run Chinook Salmon to the San Joaquin River Below Friant Dam

Dear Ms. Fehm-Sullivan:

This letter is written on behalf of my client, the Lower San Joaquin Levee District. The Levee District operates and maintains the flood protection system between Gravelly Ford and the confluence of the San Joaquin River and the Merced River. This letter contains the District's comments with regard to the above-referenced environmental document, (the draft EA). The draft EA relies heavily on the Program Environmental Impact Statement/Report, (PEIS/R), and even incorporates by reference some information contained in the PEIS/R, (EA, 1.4.1). The Levee District submitted detailed comments on the PEIS/R when it was circulated in draft form, and those comments and the response to those comments are contained in the Final PEIS/R. This process did not afford the Levee District with an opportunity to comment on the Final PEIS/R itself.

As a part of the San Joaquin River Restoration Program, the Bureau of Reclamation filed a petition with the State Water Resources Control Board in the summer of 2012. The initial petition was for a long-term change to Reclamation's Water Rights Permits in order to allow it to divert water from Friant Dam for the River Restoration Program¹. The long term permit

¹It is my understanding that the petition for the long term modification of the Water Rights Permit is still pending but that, at the request of Reclamation, the State Water Board has issued a temporary permit which, I believe, expires later this month. All references in this letter and the enclosure are to the petition for the long-term change in the place and purpose of use.

Elif Fehm-Sullivan, Protected Resources Division, National Marine Fisheries Service
Re: Draft Environmental Assessment for Nonessential Experimental Population Designation
and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook
Salmon to the San Joaquin River Below Friant Dam

March 4, 2013

Page 2

application also relies heavily on the PEIS/R. The Levee District therefore took the opportunity presented by Reclamation's application to analyze and comment on the final PEIS/R, and submitted those comments to the Division of Water Rights of the State Water Resources Control Board. A copy of the Levee District's letter is enclosed and incorporated herein by this reference.

In reviewing the EA the Levee District was heartened to see that finally a public agency in considering the environmental consequences of the River Restoration Program considered the consequences of the Program if it succeeds, beyond the scheduled termination of the Program itself. It has been one of the principal concerns of the Levee District for some time that these longer term consequences needed to be considered as a part of any environmental assessment of the Program and, specifically, of the re-operation of Friant Dam and the introduction of any endangered fish. The EA correctly recognizes the need for a designation of this population of endangered fish in some way that insulates those who work on the River, (such as the Levee District), from liability both up to and after the end of the River Restoration Program in 2025. However, the EA never directly addresses some important consequences to the reintroduction of spring run Chinook salmon to flood control.

The PEIS/R was designed to analyze the differences between two groups of alternatives. The difference between the two groups turns on how Restoration Flows are handled once they reach the upper end of Reach 4 B of the San Joaquin River. That reach of the River is so choked at present that it cannot accept any water. One proposed course of action is to reconfigure Reach 4 B so that it allows the passage of 475 cfs, with the balance of the restoration flows going into the Eastside and Mariposa Bypasses. The other alternative would be to reconfigure Reach 4 B so that it would carry 4,500 cfs. The flood control consequences of these two alternatives are significantly different. The Levee District believes that the consequences for the survival of the experimental population of spring run Chinook salmon are also significant.

The Eastside Bypass and Mariposa Bypass are both broad, flat waterways which have no vegetation between the levees. Part of the District's maintenance of these facilities requires it to remove any vegetation which does begin to grow there. Because these bypass water ways are so broad, flat and free of vegetation, the temperature of the water frequently is gets to be too high to allow Chinook salmon to survive. The PEIS/R does not definitively state how or if this situation is to be addressed, even though it is the principal difference between the two groups of alternatives supposedly analyzed in the PEIS/R. The settlement agreement calls for "pulse flows" of water during the spring and fall months. These pulse flows are thought to be necessary in order to allow migrating salmon to traverse the San Joaquin River in order to spawn. The alternative described in the PEIS/R of increasing the capacity of Reach 4 B of the River to only

Elif Fehm-Sullivan, Protected Resources Division, National Marine Fisheries Service
Re: Draft Environmental Assessment for Nonessential Experimental Population Designation
and 4(d) Take Provisions for Reintroduction of Central Valley Spring-run Chinook
Salmon to the San Joaquin River Below Friant Dam

March 4, 2013

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475 cfs. provides that the balance of the restoration flows, (including, presumably, the balance of the pulse flows), will be carried by the bypass system. Presumably this would mean that the Spring pulse flows would be largely in the River while the water in this reach of the River would remain constant. What would be the effect of this on the long term viability of the fish?

Unfortunately the EA does not discuss or analyze the differences between the two groups of alternatives which were to have been considered in the PEIS/R. It is hard to understand why the choice between these two dramatically differing alternative approaches would apparently have no significant impact on the survival of the fish which NMFS intends to release. The PEIS/R seems to take the approach in the Project level analysis of the re-operation of Friant Dam that any consequences to the fish population is outside the scope of the Project. The EA seems to take the opposite position that the ability of the fish to survive is a function of how the River and bypass system are configured. As a consequence, this issue is not examined sufficiently in either the EA or the PEIS/R. This is the very sort of piecemeal approach which both CEQA and NEPA are intended to discourage.

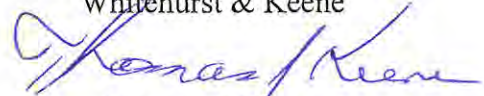
← Response
184

In fact, the EA does not seem to recognize flood protection as an area to be considered in evaluating the environmental impacts of the proposed action. For example, when Section 4.6 discusses Alternative 2, (the preferred alternative), summarizes the NEP area as including the “main stem of the San Joaquin River from below Friant dam to the confluence of the Merced River”, it does not even acknowledge that Reach 4 B of the main stem of the River may not carry all of the restoration flows nor mention the bypass system. In this regard, the EA is inadequate.

← Response
184

Very truly yours,

Linneman, Burgess, Telles,
Van Atta, Vierra, Rathmann,
Whitehurst & Keene



Thomas J. Keene

cc: Lower San Joaquin Levee District
Thomas Berliner, Duane Morris
San Joaquin River Exchange Contractors Water Authority
Central Valley Flood Protection Board

Enclosure

LAW OFFICES OF
LINNEMAN, BURGESS, TELLES, VAN ATTA, VIERRA,
RATHMANN, WHITEHURST & KEENE

DIANE V. RATHMANN
ALFRED L. WHITEHURST
THOMAS J. KEENE

SHANTELE ANDREWS-MARGASON

JAMES E. LINNEMAN, OF COUNSEL
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L. M. LINNEMAN (1902-1983)
JOSEPH B. BURGESS (1902-1990)
JAY H. WARD (1942-1995)
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JESS P. TELLES, JR. (1920-2004)

312 WEST 19TH STREET
P. O. BOX 2263
MERCED, CA 95344
(209) 723-2137
FAX (209) 723-0899

1820 MARGUERITE STREET
P. O. BOX 156
DOS PALOS, CA 93620
(209) 392-2141
FAX (209) 392-3964

654 K STREET
P. O. BOX 1364
LOS BANOS, CA 93635
(209) 826-4911
FAX (209) 826-4766

August 31, 2012

Ms. Kathy Mrowka
Division of Water Rights
State Water Resources Control Board
Post Office Box 2000
Sacramento, California 95812-2000

Re: United States Bureau of Reclamation's petition to change certain of its permits as a part of the implementation of the San Joaquin River Restoration Program.

Dear Ms Mrowka:

This letter is written on behalf of my client, the Lower San Joaquin Levee District which operates and maintains the flood protection system between Gravelly Ford and the confluence of the San Joaquin River and the Merced River. It is the District's understanding that there is currently pending before the State Water Resources Control Board an application by the Bureau of Reclamation to change certain of its permits as a part of the San Joaquin River Restoration Program's implementation. The District is familiar with the draft and final versions of the Program Environmental Impact Statement \ Environmental Impact Report for the San Joaquin River Restoration Program, (referred to hereinafter as the PEIS/R). The PEIS/R is both a programmatic document for the overall River Restoration Program and also a project document for the release of interim and restoration flows from Friant Dam.

Presumably, the State Water Resources Control Board will rely upon the PEIS/R as the appropriate environmental document for the individual project of the release of interim and restoration flows. However, this project is inseparable from the program itself and so the District's comments will be directed at both project level and program level provisions of the PEIS/R.

I. Negative Impacts considered in the PEIS/R

While the PEIS/R identifies five potential impacts at the programmatic level and five others at the project level, there were only a total of four which are considered to be within the District's area of concern.

Ms. Kathy Mrowka, Division of Water Rights, State Water Resources Control Board
Re: United States Bureau of Reclamation's petition to change certain of its permits as a part
of the implementation of the San Joaquin River Restoration Program.

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A. Increased flood risk at the Programmatic Level

FLD-1 The first of these, FLD-1, is that the program exposes people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam, (Draft PEIS/R, page 11-31, lines 29 - 31). Program-level activities include "development of floodplain and riparian habitat in Reaches 2 B and 4 B 1, which would increase vegetation or change sediment deposition patterns within these river reaches." (Draft PEIS-R, page 11-31). However, the reader is assured that hydraulic modeling of these actions shows that there will be "little to no changes in water level frequencies throughout the system", and so these impacts are considered less than significant. However, because of a "lack of recent and consistent information regarding channel and levee conditions¹... this impact is considered **potentially significant.**" (Draft PEIS/R page 11-31; Emphasis is in the original.)

The document goes on to say that the hydraulic modeling contains preliminary representations of potential levee modifications in Reaches 2 B and 4 B 1, but that a number of "additional program-level structures and modifications" are "not included in the hydraulic model", (Draft PEIS/R page 11-35, lines 18 - 21). However, "designs and impacts of all program-level actions would be further refined under site-specific studies." (Draft PEIS/R page 11-35, lines 23 - 24). In other words, the hydraulic model is not reliable because there are a number of improvements which will be made to the River and flood control systems which the model does not consider because the program has not been developed to the point that the design parameters of these improvements are known in sufficient detail to build them into the model.

This is one of the fundamental defects in the PEIS/R's approach to flood impacts: The analysis, insofar as there is any, relies on models which are incomplete or unreliable. In its letter of comment on the PEIS/R, the Levee District noted that

"an evaluation of the potential performance of the levees will require, among other things, evaluation of the composition of the levees and foundation materials,

¹Having spent a number of years and several million dollars, it is not clear at all why there is a lack of "recent and consistent information regarding channel and levee condition". It is also unclear why this lack of information is sufficient on the programmatic level to make this a potentially significant negative impact but that, in the analysis of FLD-6, there seems to be sufficient recent and consistent information to determine that there is potentially significant negative impact on the project level for the re-operation of Friant dam. The two conclusions would appear to be inconsistent with each other.

Ms. Kathy Mrowka, Division of Water Rights, State Water Resources Control Board
Re: United States Bureau of Reclamation's petition to change certain of its permits as a part
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August 31, 2012

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analysis of several modes of potential slope stability failure, as well as evaluation of seepage through and under the levees . . . Considering the potential for differences in interpretation of criteria, it is recommended that a more detailed and site specific summary of design criteria considering all potential failure modes and considering specific USACE District requirements be established." (Final PEIS/R, page 3.8-497 LSJLD 2-20)

Reclamation itself admits that it lacks "recent and consistent information regarding channel and levee conditions" (Draft PEIS/R page 11-31), to such an extent that there is a potentially significant impact for flood protection. It is impossible to create a reliable model of how the river will react to physical changes which will be constructed at the project level if you do not know both the present condition of the levees and channels *and* the parameters of those changes. This makes the entire approach of using models unreliable at the programmatic level,

The discussion in the PEIS/R of this impact goes on to point out that the floodplain restoration in Reaches 2 B and 4 B 1, "could increase vegetation and alter sediment deposition patterns . . ." (Draft PEIS/R Page 11-35, lines 26 - 27). The design of the floodplain restoration would be completed concurrently with the levee and channel improvements (Page 11-35, lines 27 - 28). In other words, we will not know whether and to what degree the proposed modifications in Reaches 2 B and 4 B 1, will increase vegetation and deposits of silt in the River before the Bureau of Reclamation designs and actually starts physically altering the River. While these improvements in Reaches 2 B and 4 B 1 would increase the capacity of those reaches, because of the unreliability of the models, there is no way of determining, (either before or after the design of the flood plain) whether those increases in capacity would be adequate to offset the losses which will result for increased vegetation and increased sedimentary deposits which will result from the speed of the river slowing. This is taking an unnecessary risk. If the program level impacts could be developed far enough to reveal the design parameters and current, reliable data concerning the conditions of the existing system can be obtained, then a computer model might be able to predict the extent to which the river will increase vegetation and deposit silt to a degree that the amount of capacity required to off set this in Reaches 2 B and 4 B 1 could be determined. The floodplain restoration for Reaches 2 B and 4 B 1, could then be designed so that the additional carrying capacity produced would off set the capacity lost due to vegetation and silt deposition.

FLD-1 is the only identified impact for which the PEIS/R has a mitigation measure. The measure is to "implement design standards to minimize risk of loss, injury or death involving flooding." The reader is assured that "site-specific projects that cannot or do not reduce redirected flood impacts to less than significant levels will not be implemented as part of the"

Ms. Kathy Mrowka, Division of Water Rights, State Water Resources Control Board
Re: United States Bureau of Reclamation's petition to change certain of its permits as a part
of the implementation of the San Joaquin River Restoration Program.

August 31, 2012

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River Restoration Program, (Draft PEIS/R, page 11-40, lines 9 - 10). It goes on to provide that, "Because the details of the program-level actions are not known at this time, there is insufficient information available to describe specific actions that would reduce this impact to less than significant levels." (Page 11-40, lines 11-12). However, the reader is assured that these problems will be addressed in the design of each of the projects within the program. (Draft PEIS/R, Page 11-40). This discussion of what is admitted to be a potentially significant impact, in practice, defers a meaningful examination of the mitigation measure to FLD-1 until after the PEIS/R becomes final. This is impermissible under the California Environmental Quality Act, *Sundstrom v. County of Mendocino* (1988) 202 CalApp3d 296. Once an impact is determined to be significant, if the project is to proceed, there must either be a statement of overriding consideration adopted or there must be a mitigation measure adopted which will mitigate the negative impact to the point of insignificance, *Fairview Neighbors v. County of Ventura*, (1999), 70 CalApp4th 238. Because there was found to be a potentially significant impact but no statement of overriding consideration was adopted, the mitigation measure must not defer its analysis until after the PEIS/R became final.

B. Increased flood risk at the Project Level

FLD-6 The first of the potential impact identified at the project level, FLD-6, is that the project of releasing the interim and restoration flows exposes people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam, (Draft PEIS/R, page 11-43, lines 3 - 5). Initially, the interim and restoration flows would be limited to the then-existing channel capacities. This coupled with the promise that under Alternatives A1 through C2, all projects would be designed to minimize risk of loss, injury or death involving flooding, would reduce this impact to "**less than significant.**" (Draft PEIS/R, page 11-43) because,

"Under Alternatives A 1 through C 2, Reclamation would implement three integrated measures that would collectively avoid a potentially significant increase in the risk of flood damage or levee failure due to under-seepage, through-seepage, erosion, or landside slope stability issues. . . These three measures are: (1) establishing a Channel Capacity Advisory Group and determining and updating estimates of then-existing channel capacities, as needed; (2) maintaining Interim and Restoration flows below estimates then-existing channel capacities; and (3) closely monitoring erosion and performing maintenance and/or reducing Interim and Restoration flows as necessary to avoid erosion-related impacts. Because measures to minimize flood risk by not significantly increasing risk of

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levee failure due to under-seepage, through-seepage, or associated landside slope stability mechanisms are included in all action alternatives, Impact FLD-6 is found to be less than significant.”²

The verb “establishing” accurately reflects the fact that no such Channel Capacity Advisory Group currently exists. The discussion of this measure is largely found in Chapter 2.0 of the Draft PEIS/R, at pages 2-22 to 2-28. The Channel Capacity Advisory Group will consist of five members – one each from Reclamation, California Department of Water Resources, the Army Corps of Engineers, the Central Valley Flood Protection Board. Tellingly, Reclamation would only be required to report to the Channel Capacity Advisory Group “annually or whenever Reclamation contemplates increasing the upper limit of releases for Interim or Restoration Flows.” (Page 2-25, lines 10 - 11). The first annual report is not due until one year after the PEIS/R Record of Decision is signed, (page 2-25, lines 20 - 21). However, the Channel Capacity Advisory Group is relied upon to, “provide timely independent review of data, analytical methodology, and results used to estimate then-existing channel capacities, including application of the USACE levee performance criteria.” (See response to comment LSJLD2-4, Final PEIS/R page 508).

Pages 2-22 to 2-28 of the Draft PEIS/R make it plain that the three cited measures are only for the purpose of allowing “the safe release and conveyance of Interim and Restoration flows throughout *the duration of the Settlement implementation.*” (Draft PEIS/R, Page 2-23, lines 13 - 14). (Emphasis added). “Reclamation would convene the Channel Capacity Advisory Group as required until 2030, but may stop earlier.” (Page 2-25, lines 26 - 27). “If after 2030 the channel capacities decrease such that full Restoration Flows cannot be conveyed, the Channel Capacity Advisory Group would be reconvened . . .” (Page 2-25, lines 29 - 30). If the River Restoration Program achieves its purpose, there will be a population of salmon in the river and bypass system for the indefinite future. The PEIS/R needs to examine the environmental consequences of the permanent changes to the environment which the River Restoration Program (and, in this case, the project of re-operation of Friant Dam), are likely to bring about – not just the changes which may take place while the program is being implemented. The PEIS/R needs to be more definitive as to the degree and duration of Reclamation's involvement in the re-

²This same language is repeated frequently, in whole or in part, in response to comments concerning flood control. See responses to LSJLD 2 -3b, -16, -69 and -75, pages 3.8-507 to 3.8-535 of the Final PEIS/R. . It is also noted that most of the Levee District's comments after 2-15, which address technical flood control issues, are repeated in the comments of the Exchange Contractors and the responses to those comments where repeated are identical to the responses given to the Levee District's comments.

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operation of Friant Dam.

The Bureau of Reclamation will make annual field surveys at potential erosion sites on the San Joaquin River between Friant Dam and the Merced River, (Draft PEIS/R, page 2-27, lines 18 - 19). This will apparently provide the information for the annual reports to the Channel Capacity Advisory Group which would allow it to achieve the third purpose identified above, ("closely monitoring erosion and performing maintenance and/or reducing Interim and Restoration flows as necessary to avoid erosion-related impacts"). The PEIS/R notes that the Lower San Joaquin Levee District currently maintains the Lower San Joaquin River Flood Control Project, but it then provides that, if

"increased maintenance activities and costs are required as a result of implementing the Settlement, including additional erosion management actions identified through the monitoring activities . . . Reclamation would conduct or enter into an agreement with others to conduct such additional maintenance activities." (Draft PEIS/R Page 2-28, lines 18 - 22).

What happens when there is no longer a River Restoration Program? Who will maintain the system in order to avoid the negative impacts from erosion? If the Program is over, where will the funding come from in order to perform the erosion maintenance? Will Reclamation continue to have any sort of presence in the flood control and River restoration area? Will it continue to either conduct or pay someone else to conduct such additional maintenance activities as are made necessary by the erosion caused by the continuing need to release enough water from Friant Dam to keep the population of endangered fish alive? None of these questions are answered by the document.

Other than these provisions on the Channel Capacity Advisory Group and the vague prospect of Reclamation possibly entering into agreements with the Levee District (or some one else) in the future, there is nothing else in the PEIS/R about the relationship between the Levee District and the River Restoration Program.³ The PEIS/R's treatment of FLD- 6 does not technically violate the precedent provided in *Sundstrom v. County of Mendocino (supra)*, in that the PEIS/R does not find that FLD-6 will have a significant adverse environmental impact.

³"The appropriate level of involvement by [the Lower San Joaquin Levee District] and other stakeholders for implementation of program-level actions would be determined during subsequent site specific studies." Final PEIS/R, page 3.8-521, Response to LSJLD 2-29. While the District is aware of Master Comment Response 8, (Final PEIS/R pages 2-36 - 2-39), it does not warrant any change the text of this letter.

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However, it certainly violates the principal set out in the *Sundstrom* case. But for the proposed Channel Capacity Advisory Group proposal and the recognition of the need to provide additional maintenance (whether by the Bureau of Reclamation itself, the Levee District under a reimbursement agreement with Reclamation or someone else under contract with Reclamation), FLD - 6 would clearly be considered a significant adverse environmental impact. In essence, the PEIS/R is saying that these measures mitigate this impact to a less than significant level. As noted above, the PEIS/R does not provide vital information about either one of these two would-be mitigation measures. It does not specify who will provide the maintenance or, after the end of the Restoration Program, who will pay for the maintenance required as a consequence of the re-establishment of the endangered species and their habitat. It does not specify who will pay for the activities of the Channel Capacity Advisory Group, whether all of the proposed members of that group will be willing to participate or what happens to that group after the end of the Restoration Program. It does not analyze the long term economic viability of the Levee District if, in fact, the Levee District does provide the maintenance of the system.

C. Reduced Maintenance at the Programmatic Level

The second of the program-level impacts identified (FLD-2) is that the program would substantially reduce opportunities for levee and flood system facilities inspection and maintenance, (page 11-40). The Levee District has repeatedly pointed out that the program itself and the proposed projects within it would and have been reducing opportunities for levee and flood system facilities maintenance. (See LSJLD 2-8, Final PEIS/R pages 3.8-492 to 3.8-493, for example). The PEIS/R, however, at the programmatic level, only examines this impact during the actual construction of the various improvements contemplated by the program and concludes that, while program-level construction may temporarily limit access for maintenance, the duration of this impact would not completely impeded these maintenance activities "but rather require minor coordination of such activities. This impact would be **less than significant.**" (Draft PEIS/R, page 11-40, line 25).

D. Reduced Maintenance at the Project Level

The seventh project-level impact identified, (FLD-7), is that the project of the re-operation of Friant dam would substantially reduce opportunities for levee and flood system facilities inspection and maintenance, (Draft PEIS/R, page 11-49, lines 5 - 6). Similar to the conclusion reached with regard to FLD-2 the PEIS/R finds that, for FLD-7, "Because regular maintenance activities within the Restoration Area maintain levee access for inspection and

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maintenance, this impact would be **less than significant.**" (Draft PEIS/R page 11-49, lines 16 - 17). However, in stark contrast to this conclusion, the final PEIS/R contains all or a part of the following language in response to many⁴ of the comments made with reference to flood issues:

"The change in operations at Friant Dam and the routing of Interim and Restoration flows could increase operations and maintenance activities regardless of the alternative selected for implementation, including increased flap gate inspection and debris removal, operation of flow control structures, levee patrols, vegetation control and sand excavation. . . Additionally flows would change the nature of operations and maintenance activities; those activities performed in a dry channel, would be performed in wet channel conditions. Reclamation would conduct or enter into agreements with others to perform such additional maintenance activities and assist the local maintaining agencies in the transition from dry to wet working conditions made necessary as a result of implementing the Settlement."

Because this same language is used repeatedly, it makes some sense to analyze it in detail, piece by piece.

"The change in operations at Friant Dam and the routing of Interim and Restoration flows *could* increase operations and maintenance activities regardless of the alternative selected for implementation . . ."

This does not amount to an outright recognition that the re-operation of Friant Dam *will* result in increased operations and maintenance activities, only that it could. However, no further analysis is provided to suggest which of the alternatives considered will not result be an increase in operation and maintenance activities. While the nature of the increase is identified, (changes in the frequency of flap gate inspection and debris removal, operation of flow control structures, levee patrols, etc.) the degree of the increase is not. Nor is the question examined as to whether these increases would, in fact, result in a diminishment of the level of flood protection provided if it were to remain unmitigated.

" . . .flows would change the nature of operations and maintenance activities; those

⁴ See responses to LSJLD 2 -10, -11, -28, -55, -56 and -86, pages 3.8-514 to 3.8-537 of the Final PEIS/R. As noted in a prior footnote, those technical comments of the Levee District with numbers above LSJLD 2-15, are repeated in the comments of the Exchange Contractors and the same response is provided.

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activities performed in a dry channel, would be performed in wet channel conditions. . . .”

Having recognized a change which has the potential to significantly impact the level of flood protection, the PEIS/R then fails to examine or analyze it. How much more expensive is it to control vegetation using herbicides which can be used in a wet channel than it has been to control vegetation using herbicides which can only be used in a dry channel? How much more time consuming will it be? As pointed out in the Levee District's comments, (See LSJLD2-7, Final PEIS/R page 3.8-492,) the degree of this impact would be significantly different if Reach 4 B of the River is reconfigured to allow the passage of 4,500 cfs than if it is reconfigured to allow the passage of only 475 cfs, with the balance of the restoration flows going into the Eastside and Mariposa Bypasses. This is the fundamental difference between the two groups of alternatives considered but no attempt is made at differentiating the impact on flood protection caused by these two fundamental differences. Once again, even though the PEIS/R is a project level environmental document for the re-operation of Friant Dam, it fails to differentiate between the alternatives which it is supposedly considering with regard to flood issues.

“Reclamation would conduct or enter into agreements with others to perform such additional maintenance activities and assist the local maintaining agencies *in the transition* from dry to wet working conditions made necessary as a result of implementing the Settlement.”

This has two aspects. First, it is clear from the use of the verb form, “would conduct or enter into”, that no such agreement currently exists. While Reclamation and the Lower San Joaquin Levee District have entered into an agreement for one year and are negotiating an agreement for an additional two year period, there is no promise of any agreement after that. Secondly, the sentence is ambiguous in that it refers to assisting in the transition from dry to wet working conditions, but it is unclear if it means that there will be an agreement for any time beyond some initial transitional period.

The Levee District, in its comments on the Draft PEIS/R, pointed out that the Draft did refer to “long-term agreements” but did not specify whether the agreement would continue beyond the planned termination of the River Restoration Program, (see the Final PEIS/R, page 3.8-494 LSJLD 2-11)). The Bureau of Reclamation's response was to remove the words “long-term”, (Final PEIS/R page 3.8-514). This, if anything, makes matters worse.

The Levee District's understanding of the River Restoration Program is that it is designed to re-establish populations of certain threatened or endangered species. While the program is in effect, the representatives of these species which will be present in the Program area, are

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considered to be experimental populations and, therefore, the incidental taking of one of them or of their habitat, does not constitute a violation of either the State or federal Endangered Species Acts. However, if the program is successful, when it ends, there will be new, self sustaining populations of these species in the project area. At that point, the "experimental" designation will be withdrawn and the people who work on and near the River (and possibly the bypass system), will be left to fend for themselves.

II. Need for analysis of the Levee District's continued viability.

One of the realities which the PEIS/R does not address is the continued financial viability of the Lower San Joaquin Levee District. It is clear that some portion of the River Restoration Program will result in widening the foot print of the River and/or the bypass system in order to accommodate additional vegetation and silt deposition caused by the creation of a riparian habitat for the salmon. This almost undoubtedly means that there will be less land within the District's boundaries which is in private ownership and productive. This erodes the District's tax base. On the other hand, it is clear that there will be increased costs in order to maintain the present level of flood protection. This is due to the fact that, as acknowledged by the PEIS/R, the District will have to work in a wet channel rather than a dry channel and that, with water in the system more often, there will be an increase in the operation and maintenance level necessary just to keep the present level of flood protection, (see the District's comments, in the Final PEIS/R pages 3.8-493 to 3.8-494). In essence, the District will have to do more work with a smaller tax base. While the PEIS/R recognizes, at various points, that this will be the case, it still leaves open a number of disturbing possibilities. Chief among them is that, once the River Restoration Program is completed, whether in 2025, as originally planned, or in 2030, as seems to be the current plan, Reclamation will withdraw from the program area and any subsidy which it has been providing to the Levee District will stop.

When the District attempted to raise this concern in its letter of comment, (Final PEIS/R page 3.8-494, See LSJLD 2-11), it was told that the reference in the Draft PEIS/R to a "long-term" maintenance agreement should have not had the words "long-term". It was referred to the discussion of the Channel Capacity Advisory Group, (Final PEIS/R response to comment LSJLD 2 - 12, page 3.8-515) even though that is described in the document itself as existing only for the duration of the settlement's implementation, (Draft PEIS/R, Page 2-23, lines 13 - 14). In response to the District's concerns of its disappearing tax base, it was told to read Chapter 16.0, on land use, (which says nothing about the District's loss of revenue), and Chapter 20.0 on Socioeconomic impacts, (which also says nothing about the District's financial condition). (See Final PEIS/R, response to comment LSJLD 2-6 b, page 3.8-511).

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III. Summary & Conclusions

Practically speaking, the PEIS/R, in at least one sense, is premature. There is no adequate information concerning the status of the existing levees, nor have the projects which are anticipated to be a part of the program developed far enough to determine their parameters, so that the PEIS/R's reliance on computer models is misplaced. Similarly, there is no agreement with the Levee District (or anyone else), as to the maintenance of the system during the implementation of the program, (which Reclamation admits needs to happen), nor is there any agreement with the Levee District or anyone else as to the maintenance of the system after the completion of the program. For all of the reliance the PEIS/R places on the Channel Capacity Advisory Group which reclamation hopes to create, the PEIS/R does not exist and, once it comes into existence, will need some time to get up and running.⁵ Each of these things should have been accomplished before attempting a PEIS/R for the program or for the project of re-operating Friant dam or at least started between the deadline for comments to the Draft PEIS/R, which was September of 2011, and the Final PEIS/R, in July of 2012.

The Levee District has called for the Settling Parties to revise their time schedules in order to approach the program more effectively and the Final PEIS/R does point out that, after the publication of the Draft PEIS/R and the deadline for the submission of comments, the Settling Parties did reconsider their time schedule. The result was the *Framework for Implementation*, (See the Final PEIS/R, pages 3.8-510 - 511, Response to comment LSJLD 2-6a, and page 3.8-513, Response to comment LSJLD 2-9).

“While the *Framework for Implementation* presents a revised schedule for implementation of the Settlement, it does not result in new significant environmental impacts, a substantial increase in the severity of an environmental impact, or create a feasible project alternative or mitigation measure that would

⁵The Levee District's letter of comment pointed out that, “The proposed Channel Capacity Advisory Group must have a clear authorized purpose and there must be agreed upon procedures, protocols and performance standards in place to guide the review and response to comments provided by the group. There must be a formal process for Reclamation to respond to and resolve comments provided by the group.” (Final PEIS/R page 3.8-497, comment LSJLD 2-21). Reclamation's response was that, “The group, once convened, and Reclamation would establish any additional procedures necessary within the context of the structure set forth in the PEIS/R.” (Final PEIS/R, page 3.8-518, response to Comment LSJLD 2-21).

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clearly lessen environmental impacts.”⁶ (Final PEIS/R, page 3.8-513, Response to comment LSJLD 2-9).

Unfortunately, the adoption of such a schedule apparently did not trigger any significant revision to the Final PEIS/R such that a survey of the condition of the existing levees could be performed or the proposed projects within the River Restoration Program could be developed enough to know their parameters and then integrate those parameters into the existing computer models or the Channel Capacity Advisory Group could be convened. Nor, unfortunately, has there been any movement on the part of Reclamation to negotiate a reimbursement agreement with the Levee District for a period longer than the present water year and the next water year.

IV. Subsidence

Since the Final PEIS/R was released, the Levee District has become aware of a pattern of significant land subsidence within its jurisdictional boundaries. This subsidence is so severe that it has the potential to turn portions of the Flood Project into lakes. The Levee District has formally asked the Bureau of Reclamation and the Department of Water Resources to consider either decertifying the PEIS/R or immediately initiating a subsequent or supplemental EIR to address this issue. The Levee District believes that the construction projects which are contemplated in the River Restoration Program should not proceed until this issue has been studied since it could have a substantial impact on whether some or all of those projects as currently envisaged, should proceed and, if they do proceed, how they should be designed.

V. Requests and Recommendations

The Levee District has reviewed the Draft Proposed Conditions published by the Division

⁶This is not quite an accurate statement. As the Levee District noted in its letter commenting on the *Framework for Implementation*, the fourth alternative in Section 4.3, (at page 26) suggests that Reach 4B be improved to the point that it will take restoration flows of up to 1,500 cfs but that the pulse flows will go into the bypass system. This is inconsistent with the way the program has been presented both at the time of the approval of the Settlement and in the legislation. The pulse flows will not serve their purposes if they are not in the same waterway as the restoration flows. This alternative then makes no sense and should not be considered. We are encouraged that this alternative does not appear in the PEIS/R.

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of Water Rights staff. In light of the forgoing discussion of the short comings of the PEIS/R, the District has a number of suggested changes to the Proposed Conditions:

1. Clarify what is meant in paragraph 14 by the "then-existing channel capacities". The Draft PEIS/R refers to capacities determined by the computer models used. The Final PEIS/R changed that reference to the USACE 2003 *San Joaquin River Mainstem, California Reconnaissance Report Sacramento District, Sacramento, California*, (Final PEIS/R page 4-216, Table 11-1). Or does this language in paragraph 14 refer to "public drafts and final reports of updated estimates" referred to in paragraph 15?
2. Amend paragraph 17, so that Reclamation's duty to coordinate its operations applies not only to the Central California Irrigation District and the San Luis Canal Company, but also to the Lower San Joaquin Levee District with reference to those facilities which are operated and maintained by the Levee District.
3. Modify paragraph 19, to separately list the Lower San Joaquin Levee District as among the agencies with which the River Restoration Program is to consult.
4. Require Reclamation to take the following steps prior to it being allowed to use its amended water permits for the San Joaquin River Restoration Program:
 - a. Perform a physical examination of all of the levees and channels within the Flood Project and rank their condition using the USACE standards as to what maintenance must be performed on them, and actually perform that maintenance;
 - b. Develop the program improvements to a point that the design parameters are determined;
 - c. Integrate the design parameters and the current condition of the levees into the computer models used in developing the PEIS/R and use that data to determine the amount of excess capacity which will be necessary to design into the flood plains in order to offset the capacity which will be consumed due to the deposit of silt and the recruitment of vegetation, *before* designing or constructing the flood plains in Reaches 2 B and 4 B 1 of the River.
 - d. Require Reclamation to perform an economic analysis of the Lower San Joaquin Levee District to determine its continued economic viability in light of the removal of land from its tax base caused by the San Joaquin River Restoration

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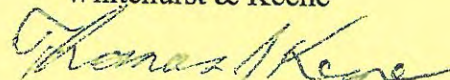
Program and the additional costs of maintaining the channels in a wet condition rather than a dry condition.

- e. Require Reclamation either to enter into a financial assistance agreement with the Lower San Joaquin Levee District or some other agency or that Reclamation itself make a legally enforceable commitment to provide the additional maintenance of the Flood Protection Project which is caused by the River Restoration Program, including but not limited to those required due to the potential for erosion during the implementation of the River Restoration Program but also those necessitated by the permanent changes which the River Restoration Program brings about to the Flood Protection Project. Such a commitment must be made to last until there is no longer a population of endangered salmon in the River.
5. Require Reclamation to implement the "three integrated measures that would collectively avoid a potentially significant increase in the risk of flood damage or levee failure due to under-seepage, through-seepage, erosion, or landside slope stability issues" described on pages 2-22 to 2-28 of the Draft PEIS/R.
6. Either prepare or require Reclamation to prepare a subsequent PEIS/R to consider the impact of subsidence on the San Joaquin River Restoration Program.

Thank you for the opportunity to comment on the draft order.

Very truly yours,

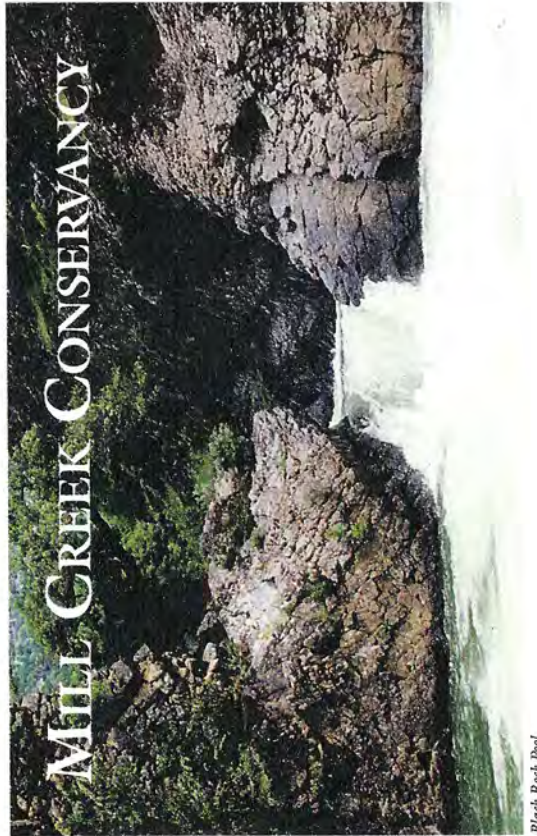
Linneman, Burgess, Telles,
Van Atta, Vierra, Rathmann,
Whitehurst & Keene



Thomas J. Keene

cc: Reggie Hill, Lower San Joaquin Levee District
Steve Chedester, San Joaquin River Exchange Contractors Authority
Jay Punia, Central Valley Flood Protection Board.

Please join us



BECOME A GUARDIAN
OF MILL CREEK

PARTNERS

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California Department of Forestry

US Bureau of Land Management

Sierra Pacific Industries

Collins Pine Company

Lassen Volcanic National Park

Pacific Coast Federation of Fishermen's Assoc.

Tehama County Board of Supervisors

Response # 185



DEDICATED TO THE
CONTINUED PRESERVATION
OF THE
MILL CREEK WATERSHED ECOSYSTEM

March 4, 2013



Mr. Elif Fehm-Sullivan
Protected Resources Division
Southwest Region, National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Re: Comment on Proposed Rule for Introduction of Experimental
Population of Spring-Run Chinook Salmon in the San Joaquin River,
NOAA-NMFS-2012-0221

Dear Mr. Fehm-Sullivan:

The State Water Contractors (SWC) appreciates this opportunity to comment on the proposed rule for the introduction of an experimental population of spring-run Chinook salmon into the San Joaquin River (“Proposed Rule”).¹ Due to the ability of the upstream introduction of a state and federally listed species to negatively affect the operation of the State Water Project and the Central Valley Project (“SWP-CVP”), thereby interrupting the water supply of millions of Californians and hundreds of thousands of acres of farmland, the SWC have a direct interest in this rulemaking.

The SWC appreciates the language in section 223.301(b)(G)(6)(ii), explicitly exempting the operation of the SWP-CVP from the federal Endangered Species Act (“ESA”) prohibition against “take” of San Joaquin River spring-run Chinook salmon, a listed species. We further support the determination that the San Joaquin River spring-run are a nonessential experimental population, and therefore no critical habitat shall be designated. The SWC feels that the National Marine Fisheries Service (“NMFS”) has made a good faith effort to satisfy the requirements of the federal legislation directing that the program, “shall provide that the reintroduction will not impose more than de minimus: water supply reductions, additional storage releases, or by pass flows on unwilling third parties² due to such reintroduction.” (San Joaquin River Restoration Act, §10011 (C)(3)).

DIRECTORS

Joan Maher
President

Santa Clara Valley Water
District

David Okita
Vice President

Solano County Water Agency

Dan Flory
Secretary-Treasurer

Antelope Valley-East Kern
Water Agency

Stephen Arakawa

Metropolitan Water District
of Southern California

Curtis Creel

Kern County Water Agency

Mark Gilkey

Tulare Lake Basin Water
Storage District

Douglas Headrick

San Bernardino Valley MWD

Dan Masnada

Castaic Lake Water Agency

Ray Stokes

Central Coast Water
Authority

General Manager

Terry Erlewine

¹ The SWC represents 27 public agencies that contract with the State of California for water from the State Water Project (“SWP”). These agencies are each organized under California law and provide water supplies to nearly 25 million Californians and 750,000 acres of prime farmland.

² “DEFINITION OF THIRD PARTY- For purposes of this subsection, the term ‘third party’ means persons or entities diverting or receiving water pursuant to applicable State and Federal laws and shall include Central Valley Project and State Water Project.” (San Joaquin River Restoration Act, §10011 (C)(1).

At the same time, we recognize that NMFS will be faced with technical challenges in developing methods for identifying San Joaquin River spring-run and distinguishing them from other runs of Chinook salmon, particularly Sacramento winter-run, at the SWP-CVP facilities. We have reviewed the technical memorandum "Considerations for accounting of incidental take and triggers at the Delta Federal and State export facilities of reintroduced San Joaquin River spring-run Chinook salmon (Technical Memorandum)." The SWC believes there are likely more efficient and accurate ways of identifying San Joaquin River spring run at the SWP-CVP that those identified in the Technical Memorandum. Under the current NMFS biological opinion, the SWC could be affected by a San Joaquin River experimental population in two ways: the seasonal take levels, and the density based restrictions for OMR. The current BiOp relies on size ranges to distinguish the different Chinook salmon runs. The SWC are concerned that juvenile spring-run from the San Joaquin River will be similar in size to winter-run from the Sacramento River. For this reason, the SWC ask that NMFS adopt genetic testing to distinguish salmon runs. Genetic testing would be useful for accurately calculating salvage under the seasonal requirements, but would require a commitment by agencies to more intensive genetic testing procedures with increased costs. Under the density based restrictions, the SWC could experience several days of pumping restrictions before the influence of the San Joaquin River spring-run could be determined. The SWC are seeking a more reliable approach to the density based calculation as well, either through genetic testing or other means. For these reasons, the SWC would like to work with NMFS in developing methods for estimating take of San Joaquin River spring-run.

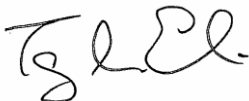
Response
186

The SWC are seeking a formal role in the development of methods to be used in the annual Technical Memorandums. The SWC propose that the rule be amended at Section 6(ii) to facilitate this participation with language as follows:

(ii) Any takings of CV spring-run Chinook salmon at the CVP and SWP projects in the Delta that originates from reintroduction to the San Joaquin River. NMFS, the Bureau of Reclamation, the California Department of Water Resources, the State Water Contractors, and the San Luis and Delta Mendota Water Authority will collaborate to develop the most effective methods for distinguishing San Joaquin River spring-run Chinook salmon from other salmonid species. NMFS shall annually determine by January 15 the share of take at the CVP and SWP facilities that originates from the reintroduction to the San Joaquin River. This determination shall provide a methodology for distinguishing San Joaquin River origin spring-run Chinook salmon from other salmonid species in calculating the operational triggers and incidental take statements associated with any biological opinion that is in effect at the time for operations of the CVP and SWP facilities.

The SWC look forward to working with NMFS in the future. If you have any questions please do not hesitate to contact me at 916-447-7357 ext. 203.

Sincerely,



Terry Erlewine
General Manager

Steve Carson

530-893-5735 scarson@sunset.net

Name	Address	Telephone #	E-mail Address	Press Affiliation Butte County P&G Comm.
<p>Comment:</p> <p>Consideration given to: (?)</p> <ol style="list-style-type: none">① Any possible effect on recreational effort/seasons due to incidental take in ocean?② Any possible effect on recreational effort/seasons on <u>non-salmonid</u> species during restoration period?③ Assuming restoration success - when (what criteria) might recreational take be allowed in river?④ Stray rate "in" of alternate river populations⑤ Marine pinniped depredation				

Response
#187

March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 “Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam”***

Dear Ms. Reed:

As a landowner (and/or farmer) along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Response #
188

Sincerely yours,

Name:	The Forbes, Yore & McGinn Corporation
Address:	PO Box 2985
City, State Zip:	Merced, CA 95344



Stockton Fish and Wildlife Office

Pacific Southwest Region

About AFRP

- Overview
- Strategy
- Definitions

Projects

- Development
- Selection
- Considerations

Watersheds

Documents

- Final Rest. Plan
- Working Paper
- CVPIA
- FONSI

Partners

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Acronyms

Production

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MILL CREEK -- WATERSHED INFORMATION

PRODUCTION

Species	1967-1991 Baseline	Target	1992-2009 Average	Increase	Percent Change
fall-run Chinook salmon	2,118	4,200	2,038	-80	-3.8
spring- run Chinook salmon	2,202	4,400	1,269	-933	-42.4

WATERSHED STATISTICS

ANADROMOUS HABITAT

COORDINATORS

Watershed area:
134 square miles
**Watershed
Priority:** high
Total storage: 0 acre-
feet

Historic: 44 miles
Current: 44 miles (100 %)

Brenda Olson

Response #
189

RESTORATION

Projected number of restoration projects: >6 **Projected total cost of restoration:** \$5,000,000.00

Total invested to date: AFRP \$1,014,000.00 other \$885,000.00

MARCH 28, 2011

PUBLIC SUBMISSION

As of: May 08, 2013 Received: January 26, 2013 Status: Pending_Post Tracking No. 1jx-83bv-uwxe Comments Due: March 04, 2013 Submission Type: Web

Docket: NOAA-NMFS-2012-0221

Designation of a Non-essential Experimental Population of Central Valley spring-run Chinook salmon below Friant Dam in the San Joaquin River, California.

Comment On: NOAA-NMFS-2012-0221-0001

Endangered and Threatened Species: Designation of a Nonessential Experimental Population of Spring-run Chinook Salmon, San Joaquin River, CA

Document: NOAA-NMFS-2012-0221-DRAFT-0002

Comment from Quanza Kent

Submitter Information

Name: Quanza Kent

Address:

Fontana, CA,

General Comment

This is a wonderful rule to implement. Salmon has become an endangered or threatened species within this geographic area and rules to reintroduce salmon in the area would generate growth and activity for the Chinook salmon. The reintroduction of the Chinook salmon in the Central Valley area is a perfect choice. This area provides great space to experiment, has adaptive traits for successful growth, low risk and feasible to remove the experimental salmon if needed. To implement this rule would be successful if properly conducted. If the salmon was to progressively adapt to the area it would create habitat conditions, merge with Friant Dam and Merced River causing an abundant of nonessential activity.

Response
191

When using the experimental source fish for this rule I believe the naturally spawning population is a good choice to adapt to Central Valley area. The naturally spawning salmon would offer a sufficient number of eggs and juveniles to support the reintroduction and develop a more stable environment for populations in surrounding basins. This expansion would reintroduce hatchery from San Joaquin River to Sacramento River but would not interact with the existing salmon population already there. I like that this experiment is independent and does not sacrifice testing of any other marine species or waters that are not significant to the experiment.

PUBLIC SUBMISSION

As of: May 08, 2013
Received: January 17, 2013
Status: Pending_Post
Tracking No. 1jx-835i-652s
Comments Due: March 04, 2013
Submission Type: Web

Docket: NOAA-NMFS-2012-0221

Designation of a Non-essential Experimental Population of Central Valley spring-run Chinook salmon below Friant Dam in the San Joaquin River, California.

Comment On: NOAA-NMFS-2012-0221-0001

Endangered and Threatened Species: Designation of a Nonessential Experimental Population of Spring-run Chinook Salmon, San Joaquin River, CA

Document: NOAA-NMFS-2012-0221-DRAFT-0001

Comment from Richard Marks

Submitter Information

Name: Richard Marks

Address:

3 Longbrook Rd.

Byfield, MA, 01922

Email: stimman@comcast.net

Phone: 603-930-7760

General Comment

Gentle Men and Women,

This is a terrible idea! What's wrong with concentrating our efforts on helping the native Trout population thrive within this watershed?

I believe that any introduction of non-native fish species would undermine the success of our native fishes.

Thank you for considering my objection,

Rich Marks

Response # 192

PUBLIC SUBMISSION

As of: May 08, 2013
Received: March 04, 2013
Status: Pending_Post
Tracking No. 1jx-840i-ryb7
Comments Due: March 04, 2013
Submission Type: Web

Docket: NOAA-NMFS-2012-0221

Designation of a Non-essential Experimental Population of Central Valley spring-run Chinook salmon below Friant Dam in the San Joaquin River, California.

Comment On: NOAA-NMFS-2012-0221-0001

Endangered and Threatened Species: Designation of a Nonessential Experimental Population of Spring-run Chinook Salmon, San Joaquin River, CA

Document: NOAA-NMFS-2012-0221-DRAFT-0003

Comment from William Paris, III

Submitter Information

Name: William C Paris, III

Address:

PO Box 9259

Chico, CA, 95927

Email: bparis@olaughlinparis.com

Phone: (530) 899-9755

Fax: (530) 899-1367

Organization: O'Laughlin & Paris LLP

General Comment

See attached file(s)

Attachments

NMFS letter re Proposed Rule Under Section 10(j) of ESA 3.4.13



SENT VIA FEDERAL ERULEMAKING PORTAL

March 4, 2013

National Oceanic and Atmospheric Administration
Office of Protected Resources
1315 East-West Highway
Silver Spring, Maryland 20910
www.regulations.gov

RE: Comments of the San Joaquin Tributaries Authority on the Proposed Rule to Designate A Nonessential Experimental Population of Central Valley Spring-run Chinook Salmon Under Section 10(j) of the Endangered Species Act

Dear NMFS:

The San Joaquin Tributaries Authority and its individual members, the City and County of San Francisco, Merced Irrigation District, the Modesto Irrigation District, the Oakdale Irrigation District, the South San Joaquin Irrigation District and the Turlock Irrigation District (collectively "SJTA"), have reviewed the proposed rule to designate a nonessential experimental population of Central Valley spring-run Chinook salmon under section 10(j) of the Endangered Species Act (hereinafter "the Proposed Rule") published on January 16, 2013, in the Federal Register. Below are the SJTA's comments to NMFS on the Proposed Rule.

1. NMFS Must Clarify the Special Take Exemptions Applicable Outside of the Experimental Population Area.

NMFS properly identifies that under the San Joaquin River Restoration Settlement Act ("SJRRSA"), the reintroduction of an experimental spring-run Chinook salmon population to the San Joaquin River cannot result in more than a *de minimis* impact on unwilling third parties, including water supply reductions, additional storage releases or bypass flows. To effectuate this requirement, NMFS proposes to amend part 223, subpart B of Chapter 1, Title 50 of the Code of Federal Regulations, to provide, in part, that

"(i) Any taking of CV spring-run Chinook salmon in those portions of the lower San Joaquin River and its tributaries downstream from its confluence with the Merced River to Mossdale County Park in San Joaquin County, by otherwise lawful activities related to diverting or receiving water pursuant to applicable State and Federal laws." (78 FR 3389)

As unwilling third parties that divert, store, convey, deliver and/or treat water from tributaries to the lower San Joaquin River, the SJTA believes that the above language is appropriate and would effectuate the meaning and intent of the *de minimis* provision of the SJRRSA. However, the SJTA is concerned that the application of the above language may not be as clear as it would otherwise appear.

Specifically, while the above language would apply to the take of any CV spring-run Chinook salmon found in the tributaries of the lower San Joaquin River, the specific discussion of the protections for unwilling third parties focuses not on “any” CV spring-run Chinook salmon, but rather on CV spring-run Chinook salmon “that originate from the San Joaquin River.” (*See, e.g.*, 78 FR 3386). Indeed, NMFS specifically states that

“The proposed special take exemptions for spring-run Chinook salmon that originate from the San Joaquin River would address areas downstream from the confluence of the Merced and San Joaquin Rivers, including all tributaries to the San Joaquin River and in the South Delta.” (78 FR 3386).

Importantly, the proposed special take exemption applicable to take that occurs in the Delta applies, as the above discussion suggests, only to CV spring-run “that originates from reintroduction to the San Joaquin River.” (78 FR 3389).

The SJTA is concerned that in practice, the proposed special take exemption applicable in the lower San Joaquin River and its tributaries will only apply to those CV spring-run Chinook salmon that are considered to have “originated” in the San Joaquin River. The practical (or stated) limitation of such special take exemption has three problems. First, it is not at all clear, either in the language of the Proposed Rule or based upon common sense, what the phrase “originate from the San Joaquin River” means. As the Proposed Rule recognizes, there are no CV spring-run Chinook salmon in the San Joaquin River Basin, and reintroduction will be accomplished by use of hatchery fish from the Feather River Hatchery initially, and perhaps augmented by naturally spawning fish from Butte Creek and other Sacramento River Basin locations. (78 FR 3383, 3385). By definition, these fish do not “originate” from the San Joaquin River.

NMFS indicates that the experimental population will be marked by fin clips, coded wire tags or genetic testing and, presumably, it is these “marked” fish that will be considered to “originate from the San Joaquin River.” (78 FR 3384). What if there is a release of fish, intentional or otherwise, that are not properly marked? How is genetic testing going to be of assistance, as the fish will have the same genetics, at least for some period of time, as those fish from the Feather River Fish Hatchery or the naturally spawning populations from the Sacramento River Basin?

Response
193



Second, assuming a natural spawning population develops during the experimental stage, how will those fish be differentiated from CV spring-run Chinook salmon that may “originate” from the Sacramento River Basin?

Response
194

Third, while NMFS expects that such fish will result in naturally spawning fish in the upper San Joaquin River that will imprint on the San Joaquin River and not stray into or interact with other Sacramento River Basin fish (78 FR 3385), there is no discussion of the possibility of Sacramento River Basin fish straying into the San Joaquin River Basin as a result of the additional flows and other actions of the SJRRSA. The Proposed Rule should discuss this potential, and provide protection to unwilling third parties located on the lower San Joaquin River and its tributaries.

Response
195

The *de minimis* requirement of the SJRRSA protects against any unwanted impact associated with the reintroduction effort. Therefore, the Proposed Rule should be clear that during the experimental period, the take of **any** CV spring-run Chinook salmon in the lower San Joaquin River and its tributaries via otherwise lawful activities related to the diversion and receipt of water under State and Federal law, as is currently provided in the proposed amendment to part 223, is exempt from take. Such special take exemption should not, in language or practice, be limited to CV spring-run Chinook salmon that “originate” from the San Joaquin River.

The SJTA requests that NMFS confirm that the language of the proposed special take exemption applicable to the lower San Joaquin River and its tributaries will apply to any CV spring-run Chinook salmon, and not just those that are considered to have “originated” from the San Joaquin River.

2. NMFS Must Clarify the Activities Associated With the Special Take Exemptions Applicable Outside of the Experimental Population Area.

The Proposed Rule states that a special take exemption will apply to areas outside of the experimental population areas if the take is caused by “otherwise lawful activities related to diverting or receiving water pursuant to applicable State and Federal laws.” (78 FR 3389). The quoted phrase is extremely vague, and needs to be more specific to properly guide the conduct of those diverting and receiving water, as well as those charged with enforcing the prohibitions on take.

Response
196

For example, does the phrase “related to” include things like flood control, restoration actions, monitoring, counting, studying and/or evaluating fish and other riparian plant and animal species, maintenance, repair and/or replacement of existing facilities, recreation or the generation of hydroelectric power? Broadly speaking, all of these activities are lawful and are undertaken in association with the diversion and use of water in the lower San Joaquin River and its tributaries. In fact, many of these activities are required as a condition of permits issued under Federal and/or State law to divert water, store water or generate hydroelectric power. The SJTA agrees with the intent of the Proposed Rule as written, but contends that additional specificity is needed to ensure that the intent is effectuated, both by the regulators and the regulated.

3. NMFS Must Clarify the Scope and Extent of the Experimental Population Area.

The Proposed Rule indicates that the experimental population area will be designated as “the San Joaquin River from its confluence with the Merced River upstream to Friant Dam, including all sloughs, channels and water ways that connect the San Joaquin River and provide passage for the species.” (78 FR 3384). Later, in the proposed special take exemption applicable outside the experimental population area, NMFS indicates that such special take exemption applies to the “lower San Joaquin and its tributaries downstream from its confluence with the Merced River...” (78 FR 3389). Both descriptions utilize the phrase “confluence with the Merced River” as a geographic demarcation, but nowhere in the Proposed Rule is that phrase defined. Such a definition is critical to know whether the Merced River is included within the experimental population area, or if the Merced River is outside of the experimental population area and included within the special take exemption.


Response
197

Having followed this process from the beginning, it seems clear that the Merced River itself is not included in the experimental population area, and that the proposed special take exemption will apply to the Merced River. However, the Proposed Rule needs to be clear on this point. To prevent any confusion, the Proposed Rule must provide a definition for the phrase “confluence with the Merced River” and must clearly indicate whether or not the Merced River is included within the experimental population area.

The SJTA appreciates the opportunity to comment. Please let me know if you have any questions.

Very truly yours,

O’LAUGHLIN & PARIS LLP



WILLIAM C. PARIS, III

WCP/tlb

cc: San Joaquin Tributaries Authority

**D.T. Locke Ranch, Inc.
P.O. Box 126, Firebaugh CA 93622**

March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"***

Dear Ms. Reed:

As a landowner (and/or farmer) along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Sincerely yours,

Name:
Address:
City, State Zip:

D.T. Locke Ranch, Inc.
P.O. Box 126
Firebaugh CA 93622

Danward Locke Jr.
President of Corp.

Response
198



FRANK A.
LOGOLUSO FARMS, INC.

March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"***

Dear Ms. Reed:

As a farmer along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Response #
199

Sincerely yours,

Janie Logoluso
CEO

Los Molinos Mutual Water Company

P.O. Box 211
Los Molinos, CA 96055

Elif Fehm-Sullivan
Protected Resources Division
National Marine Fisheries Service
650 Capitol Mall # 5-100
Sacramento, CA 95814-4706
SJRSpring.Salmon@noaa.gov

March 1, 2013

Subject: Objection to using Mill Creek salmon stock for San Joaquin River reintroduction efforts, and failure of the Federal Register (FR) and the Draft Environmental Assessment (DEA) documents to address third party impacts to LMMWC and its shareholders.

Dear Ms. Fehm-Sullivan,

Since the 1920's, LMMWC has maintained a cooperative working relationship with local fisheries agencies. We release water when fish need it. We assist in upgrading the fish ladders on our dams. We assist in installing fish screens. We grant permission for fish traps and counting cameras to be placed on our property. We allow agency biologists, engineers and geologists to inspect every aspect of our operations to improve irrigation efficiency. All told, LMMWC takes great pride in being an active player and collaborator in managing and restoring Mill Creek's wild spring-run Chinook salmon.

Therefore, we find it unacceptable for the San Joaquin River Restoration Project to request and exemption from the Endangered Species Act to take Mill Creek wild spring-run Chinook salmon stock, re-locate them to the San Joaquin, re-label them as nonessential, and use them for an experiment on the San Joaquin River. Furthermore, exempting water users and shareholders outside the Mill Creek watershed from take prohibitions on Mill Creek fish is against the very laws written to protect these endangered wild spring-run Chinook salmon. Los Molinos Mutual Water Company (LMMWC) objects to the Draft Environmental Assessment's (DEA) preferred alternative of using Mill Creek's wild spring-run Chinook salmon to meet court ordered reintroduction efforts on the San Joaquin River.

Response
200

The Federal Register (FR) and the DEA fail to address the third party impacts to LMMWC and its shareholders. LMMWC has cooperated with Resource Agencies in implementing state-of-the-art irrigation practices to ensure our water delivery facilities meet current State and Federal Fish Passage Criteria for all life stages of Mill Creek's Chinook salmon. The actions we have taken to insure our facilities don't harm Chinook salmon include:

Response #
201

- Voluntarily bypass irrigation water back into the creek to benefit salmon passage.
- Participate in ground-water conjunctive use studies and provide surface and groundwater exchanges to improve flows for salmon migrations

- Participate in irrigation water use efficiency studies, obtain grants and implement the recommended “best practices” for water management for the benefit of both irrigation and the restoration efforts of Chinook salmon on Mill Creek.
- Track and account for water rights dedicated for Chinook salmon passage.
- Educate our shareholders and community on efforts to improve Mill Creek’s salmon populations.
- Support efforts by United States Geological Survey (USGS) and California Department of Water Resources (CDWR) to keep flow and temperature monitoring stations funded and operational,

We insist that all water users, shareholders and agencies be held to the same standards in **protecting the wild spring-run Chinook salmon IN Mill Creek**. We disapprove of any plan proposing to remove these wild spring-run salmon from their natal habitat for experimental purposes on another river system.

Response #
202

Sincerely,

Darrel Mullins,
General Manager
Los Molinos Mutual Water Company

Cc : Mill Creek Conservancy

March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 “Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam”***

Dear Ms. Reed:

As a landowner (and/or farmer) along the San Joaquin River, I am interested in the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.

I hereby join in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) and the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill my obligation to exhaust administrative remedies. Whether or not I choose to raise all issues raised by the Exchange Contractors, RMC or others will be determined at a later time.

Response #
203

Sincerely yours,

Name:
Address:
City, State Zip:

Robert D Kelley
P O Box 818
Newman, CA 95360



March 4, 2013

Ms. Rhonda Reed
National Marine Fisheries Service
Protected Resources Division
Central Valley Office
650 Capital Mall, Suite 500
Sacramento, CA 95814
Email: SJRspring.salmon@noaa.gov

RE: ***Comments of the San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition to the November 2012 "Draft Environmental Assessment for Non-Essential Experimental Population Designation and 4(d) Take Provisions for Reintroduction of Central Valley Spring-Run Chinook Salmon to the San Joaquin River below Friant Dam"***

Dear Ms. Reed:

San Luis Canal Company having water rights on the San Joaquin River, is very concerned about the 4(d) and 10(j) rule setting and environmental review process for the above-referenced proceeding.

San Luis Canal Company hereby joins in the comments submitted by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors). The purpose of this letter is to fulfill our obligation to exhaust administrative remedies.

Response
204

Sincerely yours,

Palmer McCoy
Executive Assistant
San Luis Canal Company

11704 W. HENRY MILLER AVE.
DOS PALOS, CA 93620
(209) 826-5112 ** (209) 387-4305

"A MUTUAL WATER COMPANY SINCE 1913"

Appendix 1: Responses to Comments

#1 Mill Creek fish are included in the collection possibilities because the best available science determined that broad genetic input from spring-run Chinook populations to the founding stock will give the best chance for reintroduction of spring-run Chinook to the San Joaquin River (see section 3.3.1.2 in the EA). Consequently, inclusion of this stock in the alternatives analysis is appropriate. Collection of Mill Creek spring-run Chinook would be subject to approval of a 10(a)(1)(A) permit that includes NEPA review and ESA section 7 jeopardy analysis (see sections 1.2.2 and 2.2 in the EA). No collection would occur on Mill Creek if such collection would jeopardize the continued existence of spring-run Chinook. This analysis will utilize the 5-year status reviews for the ESA listed spring-run Chinook, which includes updated assessment of extinction risk. The latest review occurred in 2011 and is cited in the EA. (see section 3.2.4.1 in the EA).

Mill Creek fish can provide genetic diversity critical to the successful reintroduction of spring-run Chinook to the San Joaquin River. Successful reintroduction to the San Joaquin River is necessary to meet recovery objectives for the species. Consequently, inclusion of this stock in the alternatives analyses is appropriate. The ESA analysis associated with any proposed collection of spring-run Chinook will consider the extinction risk of the proposed source population, at the time of the proposed collection (see section 1.3.1.2).

#2 The EA does include historic and current levels of potential donor stocks (see section 3 of the EA). Although the 2005 status review for spring-run Chinook and Lindley et al's (2007) assessment found that Central Valley spring-run Chinook were at a moderate to low risk of extinction in Mill Creek, the more recent 2011 Central Valley Recovery Domain 5-Year Review concluded that recent declines in abundance of Mill and Deer creek populations (particularly from 2006-2010) place the Mill and Deer creek populations in the high extinction risk category due to their rate of decline, and in the case of Deer Creek also the level of escapement (see section 3.2.4.1 of the EA). See response to comment 1 regarding ESA analysis associated with and proposed collection of spring-run Chinook.

#3 Straying is a natural part of salmonid life history, but largely Chinook salmon will return to the rivers where they were spawned. Higher straying rates are known to occur when hatchery salmon are not released to their natal streams, especially if they are released in the Delta. Section 2.1.3.1 has been edited to clarify that all releases will occur within the Restoration Area. See section 4.3.1.1 of the EA for the straying analysis.

#4 Please see response to comment 1. In addition the reintroduction process will be implemented in an adaptive management framework (see FMP) and will consider habitat conditions in the restoration area. In addition, the use of a conservation hatchery facility (currently an ISCARF and plans for a permanent SCARF), which will house broodstock will enable reintroduction to occur with fewer fish being required to be collected from existing populations. Those fish collected from donor streams will be collected and used as broodstock; their offspring will then be either used for the next generation of broodstock, or be placed into the river. See section 2 in the EA..

#5 Local stakeholders and interested parties are invited to participate in the section 10(a)(1)(A) permitting processes, which include public input, and they have been included in the extensive public outreach process undertaken during this rule making process (see section 1.7).

#6 Copy of references cited was sent.

#7 The commenter is referring to issues that are associated with the terms of the Settlement. Actions identified in the Settlement are required obligations to be implemented by the Department of Commerce and Department of Interior, and are authorized by Public Law 111-11 (San Joaquin River Restoration Settlement Act [SJRRSA]). The purpose of the program is to implement at the SJRRP and study, implement, and fund actions defined in the Settlement and the Act. A feasibility-level of analysis will not be performed for required actions provide forth in the legal Settlement and Act. The Settlement does not require a feasibility study, as defined in Reclamation's Directive and Standards, CMP-05-02(2000) for any part of the SJRRP or the SJRRP as a whole. The Act requires feasibility studies for specific Water Management actions, but does not authorize or direct the Secretary to conduct facility studies on other parts of the SJRRP (including actions to achieve the Restoration Goal), to assess the SJRRP, or as a condition of implementing the SJRRP.

#8 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. Paragraphs (5)(i) and (5)(ii) of the regulation have been modified to connect, more explicitly, the purpose of these take exceptions to section 10011(c)(3) of the SJRRSA

#9 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. The SJRRSA section 10011(c)(3) requires that the 4(d) rule shall provide that the reintroduction of spring-run Chinook to the San Joaquin River will not impose more than de minimus: water supply reductions, additional storage releases, or bypass flows on unwilling persons or entities diverting or receiving water pursuant to applicable State and Federal laws due to such reintroduction. It does not require that all take be an exception. Paragraphs (5)(i) and (5)(ii) of the regulation take exceptions that may exceed the de minimus threshold in the specified areas, and the text has been modified to connect, more explicitly, the purpose of these take exceptions to section 10011(c)(3) of the SJRRSA.

#10 The regulation has been edited to more clearly relate to the population of spring-run Chinook reintroduced to the San Joaquin River. This would not include progeny of adult spring-run Chinook that were spawned in the San Joaquin River, but that strayed as adults to Sacramento River basin streams to spawn. Some straying occurs naturally in all salmonid populations, but at naturally low levels, to the degree that it is NMFS' determination that this would not exceed the de minimus criterion of SJRRSA section 10011 (c)(3). Imprinting procedures for spring-run Chinook released to the San Joaquin River will further assure more natural, low levels of straying of adults. However, should this calculation be proven to be incorrect in the future, the annual methodology produced by NMFS to account for the proportionate share of the take by the CVP and SWP can be adjusted to ensure the de minimus standard is met.

#11 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. The proposed regulation has been modified in Paragraph 5(ii) to define the purpose of the annual technical memo, and NMFS commitment to coordinate with parties outside the agency in the development of this document. The schedule for this document was not changed, because we believe that an annual assessment of the effectiveness of the methodology to achieve the de minimus impact requirement is warranted. NMFS acknowledges that over some periods there may be no need to revise this document, but in other years, conditions may change or the progress of the reintroduction may require a change in the methodology

#12 See response to comment 11

#13 See response to comment 11

#14 See response to comment 11

#15 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. The proposed regulation has been modified in Paragraph 5(ii) to define the purpose of the annual technical memo, and NMFS commitment to coordinate with parties outside the agency in the development of this document.

#16 Agreed that the annual determination of the methodology will address changing conditions and be responsive to current and future ESA consultations.

#17 The Technical Memorandum does not conclude that reintroduced spring-run Chinook will not fit in this category. On page 8, we identify that “The question remains whether these fish would fall into the older juvenile Chinook salmon category and contribute to the trigger.” The document cites the Butte Creek as an indication that San Joaquin River fish may not fit into this size category, but the discussion continues with a recommended approach for collecting similar information on spring-run Chinook reintroduced to the San Joaquin River.

#18 We agree that inclusion of “other fish” into the purpose and need statement renders it overly broad. The EA has been modified in response to this comment. Further, we then analyzed whether the range of alternatives required modification once the goal of restoration and maintenance of “other species” was omitted from the need statement. We concluded that no additional changes were needed to the alternatives (e.g., deletions, additions, or modifications) because they accurately meet the revised purpose and need statement and continue to represent a full range of reasonable alternatives.

We disagree, however, that the purpose and need statement be revised to include the regulatory scheme and related mandates necessary to reintroduce, restore, and maintain spring-run Chinook . The purpose and need statement should be read as “the purpose and need for implementing the major federal action;” the major federal action is reintroduction via an ESA section 10j rule. Further, including the regulatory requirements into the purpose and need would render the range of alternatives too restrictive since the only alternatives to analyze could then be no-action and the proposed action (i.e., no other alternative would meet the regulatory mandates outlined by the commenter). The regulatory

requirements are, however, necessary as context for the purpose and need statement, and can be found in sections 1.3.1 through 1.3.1.2.

#19 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. Paragraphs (5)(i) and (5)(ii) of the regulation take exceptions to address the de minimus threshold in the specified areas, and the text has been modified to connect, more explicitly, the purpose of these take exceptions to section 10011(c)(3) of the SJRRSA.

#20 NMFS requested input on how to address the de minimus requirement in the SJRRSA from the public, including the commenters or their representatives, at more than 10 public workshops, small group meetings, and public SJRRP technical feedback group meetings between April 28, 2010 and the release of the proposed rule in January 2013. NMFS proposed to use the language for the 4(d) rule requirement in the SJRRSA, and we suggested the concept of a methodology to calculate and deduct the relative contribution of spring-run Chinook produced from the Restoration Area from incidental take allowances at the export facilities.

#21 The draft technical memorandum (posted Jan 28, 2013, updated Feb. 23, 2103) identifies ways in which spring-run Chinook reintroduced to the San Joaquin River could impact the required de minimus outcomes under current operational conditions, and how such impacts could be managed to achieve a de minimus level of impact. The language of paragraph (5)(iii) has been modified to include input from parties outside of NMFS in the development of the annual technical memorandum.

#22 For clarification, NOAA's NEPA implementing regulations state "Establishment of experimental populations pursuant to section 10(j) of the ESA requires and EA...Establishment of some experimental populations may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action" (NAO 216-6, 6.03(e)(2)(e)) [emphasis added]. Similarly, NOAA's NEPA implementing regulations state "Promulgation of special management rules pursuant to section 4(d) of the ESA requires and EA...section 4(d) rules may require and EIS, but that finding will be determined on a case-by-case basis or after an EA is completed (NAO 216-6, 6.03(e)(2)(a)) [emphasis added]. As such, an EIS is not a requirement to analyze the effects of a proposed experimental population designation or promulgation of the related section 10(j) rule.

NMFS adequately assessed the potential environmental consequences of the proposed action on the human environment, and concludes that no significant impact will occur. Consequently, no additional information necessary to inform the decision-maker regarding impacts of the experimental population designation or related rule implementation would be garnered from preparation on an EIS on this proposed action.

#23 Cumulative Impacts can only analyze the circumstances based on the potential impacts that may result from the proposed action. Changing the proposed rule from non-essential to essential will require another federal action, which will then trigger NEPA. The impact would be analyzed at that time.

#24 To analyze the potential effects on the human environment from a proposed action, NMFS correctly makes assumptions that other related factors such as compliance with other laws, plans, and

policies and adequate funding to carry out the proposal will occur. Further, NMFS analyzed a no-action alternative, which effectively addressed conditions if the proposed action were not implemented. Lack of implementation could result from a suite of potential factors including lack of funding or non-compliance with a related law. Finally, NMFS incorporates adaptive management components from the FMP and the San Joaquin River Conservation Hatchery HGMP into its alternative analyses to address changing conditions in procedure or outside factors that may alter the course of the proposed action, including lack of funding (see sections 1.4.2, 2.1.3.1, 2.1.3.2, 4.1, and section 5 of the EA). If the reintroduction program were halted because of a lack of funding, NMFS would then reevaluate the program and make necessary adjustments through its regulatory processes.

The EA analyzes the potential impact associated with establishing the 10(j) rule area and associated 4(d) take exceptions. The establishment of rules and take exceptions for an endangered species and any associated impacts are not dependent on project funding. The exceptions of the 10(j) and 4(d) rules will limit potential ESA regulatory impacts to human activities from the placement of spring-run Chinook in the San Joaquin River. If funding issues prevent the completion of some SJRRP actions, there would be no impacts to these parties from the reintroduction of spring-run Chinook (see section 4.3.5).

#25 The Draft EA analyzed the potential impacts associated with establishing the 10(j) rule area and associated 4(d) take exceptions (see section 4.3.1.1 of the EA). The exceptions of the 10(j) and 4(d) rules will limit potential ESA regulatory impacts to human activities from the placement of spring-run Chinook in the San Joaquin River (see section 4.3.6). If funding issues prevent the completion of some SJRRP actions there would be no impacts to these parties from the reintroduction of spring-run Chinook. Further, as discussed in the EA the collection of spring-run Chinook and placement in the San Joaquin River would not impact the overall status of the species (see section 4.1 of the EA).

#26 These projects were programmatically analyzed by the PEIS/R and will subject to further NEPA analysis as site-specific projects are proposed (see section 1.3.1.1 and 1.4.1 of the EA). The EA analyzed the potential impacts associated with establishing the 10(j) rule area and associated 4(d) take exceptions; future site-specific actions are speculative at this time and, therefore, not within the scope of this review.

#27 The EA and proposed rule only focus on the designation of an experimental population. This comment relates to the implementation of the Settlement Phase I actions. Questions related to subsidence are not an appropriate scope of inquiry related to the Proposed Action. Subsidence concerns are being accounted for in SJRRP site-specific projects, such as the Reach 4B, Eastside Bypass, and Mariposa Bypass Improvement Project and the Arroyo Canal Fish Screen and Sack Dam Fish Passage Project. These issues are being addressed through data collection and design to account for subsidence. The comment does not raise issues or concerns specific to the environmental analysis within the scope of the EA.

#28 For the purposes of this EA, NMFS assumes that all channel and structural modifications, habitat improvements, and water releases, will be implemented as required by the Settlement. Implementing only some of these measures would not achieve the restoration goal, and thereby would not fulfill the

terms and conditions of the Settlement. The exceptions of the 10(j) and 4(d) rules will limit potential ESA regulatory impacts to human activities that may occur as a result of the placement of spring-run Chinook in the San Joaquin River. If funding issues prevent the completion of some SJRRP actions there would be no impacts to these parties from the reintroduction of spring-run Chinook. Further, as discussed in the EA the collection of spring-run Chinook and placement in the San Joaquin River would not impact the overall status of the species.

#29 The cumulative impacts of the potential river improvements and habitat changes are discussed in Chapter 26 of the PEIS/R and section 5 of the EA. The EA states that a program level analysis of habitat and conveyance (channel improvement) projects, the anticipated effects of water releases and the proposed reintroduction actions of fall and spring-run Chinook into the San Joaquin River is also provided in the PEIS/R (see section 1.4.1 of the EA).

The comment does not provide sufficient explanation as to why the EA analysis is deficient in the resource areas identified.

#30 The proposed 4(d) rule does provide regulatory relief to lawful flood control activities to these locations commented on. Please see the proposed NEP area map (Figure 1) in section 1.1.2.

#31 As outlined in the preamble, monitoring and analysis is necessary to gauge the progress of the proposed reintroduction program and to provide information for decision-making and adaptive management (see section 4.4 of the EA). Fish passage, fish biology, aquatic habitat, and conservation hatchery facility operations will be the primary focus of the monitoring (FMP, 2010). Also see the preamble to the Rule for more detail regarding specific monitoring procedures. Monitoring activity outlined through 10(a)(1)(A) permits and special handling for scientific or salvage and rescue purposes under the existing 4(d) permitting protocol and adaptive management components of the FMP or San Joaquin River Conservation Hatchery HGMP, as is incorporated into the reintroduction process of the SJRRP, would help ensure that the affected spring-run Chinook is adequately protected, should changing conditions in procedure or outside factors occur that may alter the course of the SJRRP.

#32 Recent video weir data on the Stanislaus and Tuolumne rivers for the past few years indicate that there are a fair number of salmon returning annually to these systems, which historically would coincide with spring-run Chinook timing. This information is sufficient for NMFS to assume potential populations in these water ways. Hence these areas would not meet the geographically separate condition for ESA section 10(j).

Within the NEP area take exceptions apply to take that occurs incidental to otherwise lawful activities. Persons or entities, like the Exchange Contractors, who divert or receive water pursuant to applicable State and Federal law would be conducting this activity in a lawful manner, thus the de minimus result will be met on the Exchange Contractors or on any unwilling persons or entities . Refer to section 1.3.1.1.

#33 Thank you for the comment on length of the rule. The rule as proposed has no date of termination.

#34 Recent video weir data on the Stanislaus and Tuolumne rivers for the past few years indicate that there are a fair number of salmon returning annually to these systems, which historically would coincide with spring-run Chinook timing. This information is sufficient for NMFS to assume potential populations in these water ways.

#35 The EA has been modified in response to this comment (see section 3.2.4.3).

#36 The EA has been modified in response to this comment (see sections 3.3.2.3 and 3.3.2.4). Historical accounts of spring-run Chinook on the Tuolumne River are documented in detail and referenced in (Yoshiyama et al. 2001), from 1848 to 1946. With these historical accounts and the current documentation of spring-run Chinook, NMFS cannot include the Tuolumne River in the experimental population designation, as by definition, and experimental population must be separate from other populations of the same species. The experimental population area for experimental CV spring-run Chinook salmon population would be defined as the San Joaquin River from its confluence with the Merced River upstream to Friant Dam, including all, sloughs, channels, floodways, and water ways that connect the San Joaquin River and provide access for the species. In addition, the experimental area includes portions of the Kings River in high water years that provide connectivity between the Kings River with the San Joaquin River. The experimental population area is within the species historical range, but it is presently unoccupied by CV spring-run Chinook salmon and is outside the currently defined freshwater and estuarine boundary of the CV spring- run Chinook salmon ESU.

#37 The Settlement identifies filling and/or isolating the highest priority gravel pits in Reach 1 based on the relative potential for reducing juvenile salmon mortality. This action was analyzed in the April 2011 PEIS/R for Impact FSH-8, page 5-72. This analysis states that for program-level actions, improved instream and floodplain habitat conditions and isolating or filling gravel pits in Reach 1 would likely reduce largemouth bass populations and subsequently decrease predation on representative special-status fish species, which would be beneficial for native fish populations. Additionally, projects in Reach 2B and Reach 4B/Eastside Bypass are currently under development. These projects are being evaluated for their ultimate potential to provide a combination of fish habitat, flood protection, and the continuance of water supply availability (See section 3.4.2 in the EA).

#38 All fish are subject to flow and temperature impacts in addition to any other impacts that they are subject to, including predation. Both the PEIS/R and the EA address predation risks on salmon, particularly during its juvenile stage. Should the proposed Restoration actions be carried out, the impact on predation rates on Chinook salmon, including juvenile salmon, would not be changed from those predation rates and fish assemblages already seen in the tributary rivers adjacent to the San Joaquin River (see section 4.3.2 of the EA) Program-level actions are identified in the PEIS/R for Impact FSH-8. Restoration actions, such as constructing fish passage structures, restoration of habitat, isolation of high priority gravel pits, and the creation of floodplain would be beneficial for fish. While there could be predation in some facilities or backwater areas, the avoidance of disturbing riparian vegetation or replacement of riparian vegetation will create shelter for juvenile salmonids, as identified in the PEIS/R Conservation Strategy, Table 2-7, CVS-1 and CVS-2. The EA has been modified in response to this comment (see section 4.3.2).

#39 Predation is a factor in any restoration action within the entire Central Valley. The effects of predation have been discussed in the PEIS/R. Many modifications to the habitat as outlined in the Settlement are targeted at addressing some of these issues. However this EA is specific to the designation of an experimental population and take exception regulations. Furthermore, both of the fish assemblages and predation rates within the Restoration area are not expected to change as a result of the reintroduction action (see section 4.3.2 of the EA). Predation of largemouth bass is further analyzed on page 5-72 and 5-73 of the PEIS/R, and it is determined that for program-level actions, improved instream and floodplain habitat conditions and isolating or filling gravel pits in Reach 1 would likely reduce largemouth bass populations and subsequently decrease predation on representative special-status fish species, which would be beneficial for native fish populations. The EA has been modified in response to this comment (see section 4.3.2).

#40 Both the PEIS/R and the EA address predation risks on salmon, particularly during its juvenile stage, and find that there would be no change in predation rates on spring-run Chinook. The EA language has been modified in section 4.3.2 for consistency. Program-level actions are identified in the PEIS/R for Impact FSH-8. Restoration actions, such as constructing fish passage structures, restoration of habitat, isolation of high priority gravel pits, and the creation of floodplain would be beneficial for fish. While there could be predation in some facilities or backwater areas, the avoidance of disturbing riparian vegetation or replacement of riparian vegetation will create shelter for juvenile salmonids, as identified in the PEIS/R Conservation Strategy, Table 2-7, CVS-1 and CVS-2.

#41 Comment noted, the proposed rule will provide take exceptions.

#42 The local cities owning land located within the Restoration Area are listed. This section is dealing with land/use ownership only (see section 3.6.4 of the EA)

#43 The Settlement requires implementation of Interim and Restoration Flows as further defined in Exhibit B. These hydrographs were developed to restore a variety of fish species and habitat functions, including spring-run and fall-run Chinook.

#44 Reviewer's comments noted. Water temperature, as noted by the commenter, was discussed in the PEIS/R in relation to fish survival and SJRRP implementation in the Fish and Wildlife chapter. Further discussion of water temperature can also be found in section 3.6.5.1 of the EA. Any comments on that document should be addressed to the Department of the Interior. The commenter notes that this was "downplayed" in the PEIS/R, but does not provide a specific reference as to the context or the specific temperature analysis to which they are referring. Therefore, there is no particular item that can be accurately and succinctly addressed in response to the issue raised. The EA only analyzes the designation of an experimental population. The comment does not raise issues or concerns specific to the environmental analysis within the scope of the EA.

#45 The EA does not state that water temperatures in the upper San Joaquin River will be spared from impacts from climate change (see Hayhoe et al. as referenced in section 5 of the EA). However, as most climate change models from Hayhoe et al. 2004 predict elevated water temperatures coupled with declines in precipitation and snowpack during the latter half of this century, spring-run Chinook may

have higher viability in reproduction in the upper San Joaquin River than where they currently exist (the EA uses Butte Creek as an example in section 5), since water runoff flowing into the upper San Joaquin comes from comparatively higher elevations, and because the upper San Joaquin has the added benefit of having an upstream reservoir to store water at cooler temperatures over time (see section 5 in the EA).

#46 The PEIS/R addressed all project and program level actions associated with the implementation of the Settlement, as authorized by the Act, for the SJRRP. The PEIS/R discussed at a program-level the release of Chinook salmon to the San Joaquin River and the designation of an experimental population. The Draft EA provides the project-level analysis to the designation of an experimental population, as outlined at a program-level in the PEIS/R. Each of the site specific projects as identified in the settlement will have their own NEPA and ESA processes.

#47 The EA and proposed rule only focuses on the designation of an experimental population in relation to spring-run Chinook. The comment does not raise issues or concerns specific to the environmental analysis within the scope of the EA.

#48 Both the PEIS/R and the EA agree that predation risks on salmon, particularly during its juvenile phase, is an important factor to address when determining whether or not proposed project-level actions for the SJRRP would either increase or decrease these risks. While the PEIS/R does indicate that restoration actions may increase predation risks for representative special-status species, especially during their juvenile life stages, implementing special-status fish conservation measures of the Conservation Strategy in the PEIS/R will offset potential adverse effects on special-status fish species. Furthermore, the reintroduction of spring-run Chinook to the Restoration Area is not expected to result in different fish assemblages than those already seen in the tributary rivers. As a result predation rates will not be changed (See section 4.3.2 in the EA). Program-level actions are identified in the April 2011 PEIS/R for Impact FSH-8. Restoration actions, such as constructing fish passage structures, restoration of habitat, isolation of high priority gravel pits, and the creation of floodplain would reduce predation on juvenile salmon. While there could be predation in some facilities or backwater areas, the avoidance of disturbing riparian vegetation or replacement of riparian vegetation will create shelter for juvenile salmonids, as identified in the PEIS/R Conservation Strategy, Table 2-7, CVS-1 and CVS-2. To the barrier discussion, section 4.3.2 of the EA discusses barriers to prevent fall and spring-run Chinook hybridization.

#49 The EA has been modified in response to this comment (see section 4.3.5, and section 5).

#50 Within the NEP area, take exceptions would cover take that occurs incidental to all otherwise lawful activities. This would include lawful water diversion and management uses. The proposed action addresses the requirements of SJRRSA section 10011(c)(3).

#51 The cumulative impacts of the potential river improvements and habitat changes are discussed in Chapter 26 of the PEIS/R. Cumulative effects associated with the proposed designation of an experimental population are analyzed in the EA in section 5.

#52 Cumulative impacts were identified for the SJRRP in the PEIS/R and the section 5 of the EA. The PEIS/R evaluates the environmental impacts of implementing the Settlement and available funding is not presented within the NEPA/CEQA document, nor are those environmental impacts that should be considered in the PEIS/R. Availability or lack of funding in an EIS or EIR is not required under NEPA or CEQA. However, throughout Settlement implementation, the Implementing Agencies will remain cognizant of funding availability and the need to prioritize individual actions in recognition of their anticipated costs and effectiveness.

#53 See response to comment 1.

#54 See response to comment 2. Also, see section 3.2.4.1 of the EA.

#55 See response to comments 1 and 3, and section 3.4 of the EA.

#56 See response to comment 5.

#57 Comment noted.

#58 Collection of Mill Creek spring-run Chinook would be subject to approval of a 10(a)(1)(A) permit, which would include NEPA review and ESA section 7 jeopardy analyses prior to any decisions regarding take of these fish (See sections 1.2.2 and 2.2 in the EA). No collection would occur on Mill Creek if such collection would jeopardize the continued existence of spring-run Chinook. Mill Creek fish are included in the collection possibilities because the best available science determined that broad genetic input from spring-run Chinook to the founding stock will give the best chance for reintroduction of spring-run Chinook to the San Joaquin River, especially as habitat conditions are developing.

#59 See response to comment 1.

#60 The statutory requirements for the AFRP doubling goals are different than those stated in the ESA and are not applicable in this case. See response to comment 1 and section 3.3.1.2 of the EA.

#61 See response to comment 5.

#62 This comment is directed at the PEIR\S, which has already addressed this issue, and the issue of water rights is addressed section 2.1.3.2 of the EA. Please see Chapter 2 of the Final PEIS/R.

#63 The purpose of Figure 1 in section 1.1.2 of the EA is only to illustrate the documented current and historical distributions of spring-run Chinook. There are various locations, especially in Reach 1, that would contain suitable spawning habitat for spring-run Chinook, as water temperatures in these locations within the Restoration area are comparable to those water temperatures found at elevations used by Mill Creek salmon. The EA has been modified to clarify existing habitat conditions (see sections 3.4.2 and 3.6.5.1 of the EA).

#64 The EA states in section 1.4.1 that a program level analysis of habitat and conveyance (channel improvement) projects, the anticipated effects of water releases, and the proposed reintroduction

actions of fall and spring-run Chinook into the San Joaquin River is also provided in the PEIS/R. Furthermore,

anticipated schedules for implementation of the SJRRP are outlined in the PEIS/R, the Draft Framework for Implementation, and the Settlement. Success for the reintroduction process is anticipated to increase as river conditions improve as part of the greater SJRRP, which is discussed in section 4.3.1.1 of the EA.

#65 See response to comments 1 and 60, along with section 3.3.1.2.

#66 See response to comment 1.

#67 The SJRRP PEIS/R analyzes impacts on a project- and program-level. Project level impacts from the implementation of the SJRRP are addressed in detail in the PEIS/R for flows and flow-related actions. Program-level impacts associated with the SJRRP, such as the release of Chinook salmon or site-specific channel improvement projects, are addressed at a broader program-level of impact. The EA provides project-level analyses that further refine information on the program-level of analyses presented in the PEIS/R. Therefore, a specific detail, such as source stock selection, is beyond the scope of review for a program-level analysis, such as the analyses in the PEIS/R, and is being provided here for the project-level analyses.

#68 While NMFS is in agreement that river elevations can play a critical component when identifying suitable spring-run Chinook habitat, and that the elevations of Mill Creek and the Restoration Area differ from each other, there are various locations within the Restoration Area, especially in Reach 1, that contain suitable spring-run Chinook habitat comparable to that of Mill Creek, despite differences in elevation between the two locations.

#69 The November 1, 2011, Restoration Goal Technical Feedback Group meeting was publicly noticed, and attendance was at the discretion of the public, including the Mill Creek Conservancy. The EA has been revised with a more complete list of publicly noticed, technical feedback opportunities provided to discuss spring-run Chinook reintroduction (see section 1.7). In addition, these meeting notices, past presentations, and summaries are published on the SJRRP website <http://restoresjr.net>. Biologists from CDFW Region 2, representing northern California streams have been present at several of these meetings, as indicated in the meeting summary attendance lists.

#70 The proposed action is designation of an experimental population to release spring-run Chinook into historical habitat where they do not presently occur (see section 2 of the EA). The end objective for implementation of the proposed action is to achieve a self-sustaining population of spring-run Chinook in the San Joaquin River. If reintroduction is successful, it would aid in recovery of the entire ESU of Central Valley spring-run Chinook, not just that of Mill Creek.

#71 The spring-run Chinook on the Stanislaus and Tuolumne Rivers are of unknown genetic origin and are even less abundant than Deer and Mill Creek populations. NMFS will consider Deer and Mill Creek populations for reintroduction once their genetics are known. These fish are important on the

Stanislaus and Tuolumne Rivers as possible remnants or recolonizers of possible spring-run Chinook populations (See sections 3.3.2.2 and 3.3.2.3 of the EA). Any collection activity would be subject to approval of an ESA section 10(a)(1)(A) permit that includes NEPA review and ESA section 7 clearance ((See section 1.2.2 of the EA). No collection would occur on Mill Creek if such collection would jeopardize the continued existence of Central Valley spring-run Chinook .

#72 After Friant Dam was constructed (but before water diversions were fully implemented), numerous spring-run Chinook returned to the river below the dam during the years when the river flowed below Sack Dam (FMP 2010). Text has been added to the EA to include information that demonstrates that the habitat directly below Friant Dam can hold and sustain a large number of spring-run Chinook (See section 3.2.2 of the EA). The Fisheries Management Plan (SJRRP 2010) includes management considerations to avoid potential hybridization or spring-run and fall-run Chinook within the Restoration Area, and further discussion of barriers to prevent hybridization can be found in section 4.3.2 in the EA.

#73 Comment noted.

#74 See response to comment 1

#75 See response to comment 1. Further information regarding take exceptions for the proposed NEP is outlined in section 2.1.3.2 of the EA.

#76 Deer and Mill creeks are not intended as potential collection sites for donor stock before other potential collection sites are first considered. The EA has been modified to reflect that the order of listing does not imply prioritization (see sections 2.1.4 and 2.2 of the EA). The consideration process regarding collecting donor stock for the purposes of the SJRRP is further explained in section 2.2 of the EA. Deer and Mill Creek fish would not automatically be considered better collection sites than other locations as the commenter suggests.

#77 NMFS agrees with the first half of the comment regarding life history cycles for Mill Creek spring-run Chinook but, in regards to adequate population size this will be considered in the ESA evaluation of any section 10(a)(1)(A) permit application and all section 7 consultations on actions that may affect Central Valley spring-run Chinook . See response to comment 1.

#78 FRFH is a consistent source of spring-run Chinook. Initially, when channel and habitat improvements are in development, collections of captive broodstock for direct release to the San Joaquin River would rely on FRFH fish. Broodstock development would also rely on FRFH eggs unless wild populations were sufficiently abundant to support collection of individuals whose genetics could be integrated into the broodstock program, guided by a NMFS approved HGMP. We would later consider diversifying the donor stock with fish from the naturally spawning population in other streams if and when those populations can sustain the removal of fish. Over time, broodstock at the conservation hatchery facility would produce juveniles that would be released to the river in sufficient numbers to enable, in combination with SJRRP channel and habitat improvements, the return of sufficient adults to complete their life cycle. Ultimately, the fish would establish a naturally self-sustaining population of

spring-run Chinook, and the conservation hatchery contribution would be phased out. All collections of donor stock would require the application for and approval of section 10(a)(1)(A) permit(s), and associated NEPA and ESA section 7 review. See section 2.1.4 of the EA and section 2.2 of the EA under the Subheading All Donor Stock Sources Alternative (Preferred Alternative), for further clarification.

#79 See response to comment 1.

#80 The EA analyses concluded that the duration alternatives/periods would have limited certainty for the human environment, and would not fulfill the intent of the SJRRSA. The comment does not indicate what specific concern is related to duration alternatives.

#81 See response to comment 76.

#82 Consistent opportunities for spring-run Chinook life cycle completion will be present in the San Joaquin River below Friant Dam due to mandated flow and habitat improvements outlined in the San Joaquin River Restoration Program (PEIS/R) (see section 3.4 of the EA). NMFS does not expect the conditions to exactly duplicate any one of the existing spring-run Chinook streams, which is why providing broad genetic diversity in the founding stock is important for the successful reintroduction to the San Joaquin River.

#83 See response for comment 82 (see sections 3.4 and 3.6.5.1 of the EA).

#84 See response to comments 1, 2.

#85 The EA has been modified in response to this comment (see section 3.3.1.3 and Figure 10 in the EA).

#86 The EA has been modified in response to this comment (see section 3.3.1.3 and Figure 10 in the EA).

#87 See response to comment 1.

#88 The Coleman Hatchery Management Plan is not discussed in this section because the Coleman National Fish Hatchery does not produce CV spring-run Chinook. Text was modified in section 3.3.1.6 of the EA to include the role of the hatchery weir, and the Battle Creek Restoration Program, along with the present and future of this population.

#89 See response to comments 1, 72, 82.

#90 See response to comment 72.

#91 Reintroduction effort and Restoration Goals of the SJRRP would help with the overall recovery of the species, including those populations found through the species current range, including Mill Creek spring-run Chinook (see sections 1.3.1.1 and 4.3.1.1 in the EA).

#92 Comment noted.

#93 An exact duplication of water quality is not possible, but conditions that are conducive of salmon survival will be present in the San Joaquin River prior to take.

#94 See response to comment 93 and section 3.6.5.1 of the EA.

#95 See response to comment 93.

#96 Comment noted.

#97 Water flow and infrastructure/habitat modifications are part of the SJRRP, and are analyzed in detail in the PEIS/R (see section 1.4.1 of the EA) .

#98 Comment noted.

#99 Any collections of fish from Mill Creek would only be authorized under an ESA section 10(a)(1)(A) collection permit (See section 1.2.2 of the EA). Issuance of this permit requires additional NEPA analyses and ESA determinations, which include analyses of proposed actions to determine if they have adverse impacts on the human environment (See sections 1.2.2 and 2.2 in the EA). NEPA and ESA reviews are public processes with public notification.

#100 See response to comment 5.

#101 The Restoration Act requires NMFS to report to congress on the spring-run Chinook reintroduction in December 2024. Congress has not requested an annual report on the program from NMFS.

#102 In section 4.3.2 of the EA, it is stated that although there is presently no specific information on how salmon will use the spawning areas below Friant Dam the SJRRP includes the potential for continued operation of temporary fish barrier(s) to seasonally restrict access by fall-run Chinook to the San Joaquin River in the Restoration Area to prevent hybridization with spring-run Chinook if necessary (an analysis of straying and potential hybridization risks is also discussed in the 4d rule). The commenter did not provide scientific information on additional species requiring analyses of potential hybridization impacts.

#103 Site-specific data regarding impacts to Donor Stock will be analyzed during the process of considering issuance of a 10(a)(1)(A) permit for collections and subsequent NEPA analysis and ESA section 7 consultation (See sections 1.2.2 and 2.2 in the EA).

#104 Comment noted.

#105 Comment noted.

#106 Volitional reintroduction of spring-run Chinook to the SJR was considered and discussed in the No Action Alternative Analysis of the EA (See section 4.2 of the EA).

#107 The SJRRSA requires that reintroduction of spring-run Chinook to the San Joaquin River be done pursuant to section 10(j) of the ESA. Mill Creek does not meet ESA section 10(j) statutory requirements to be designated an experimental population. The parties listed in the comment would not be affected by the reintroduction of spring-run Chinook with respect to water supply, storage releases, or bypass flows pursuant to SJRRSA section 10011(c).

#108 Spring-run Chinook in the NEP area will be protected from directed take, unless allowed by permit. Outside of the NEP area, these fish will be protected from unpermitted take, except for a limited set of activities. All other laws and regulations that protect salmonid and riparian habitat will remain in effect, both in the NEP area and beyond. (see section 1.3.1.2 of the EA for additional information).

#109 See response to comments 1, 48, 60, and 82.

#110 Comment noted.

#111 The summary has been revised to clarify this intent. For the area where unintentional take resulting from lawful activities is exempted, some examples have been included in the preamble to the rule, as suggested.

#112 The preamble has been revised to refer to section 10011. All of the requirements of section 10011 were considered in developing the regulation, including how section 10011(c) exceptions for particular third parties could be achieved, while also meeting ESA requirements.

#113 The findings of this lawsuit apply to Siskiyou County only. The preamble language to the regulation has been edited to specifically cite the California statutory language.

#114 Some examples were moved from the regulation text to this section of the rule supplemental information and flood management and water management activities were added. Otherwise the text of this section has not been changed

#115 Comment noted, language was changed.

#116 The amendment to the CFR is included at the end of the proposed rule due to precedent of previous Federal Register notices. The preceding language to the proposed rule outlines the steps and considerations taken to arrive at the final proposed rulemaking. There is a summary of the proposed rule and take exceptions at the beginning of the proposed rule language.

#117 The experimental population designation does not extend downstream of the confluence of the Merced and San Joaquin Rivers. One requirement for experimental populations is that they are wholly geographically isolated from other individuals of their species. Fish weir counts indicate that there may be remaining spring-run Chinook on the Stanislaus and Tuolumne rivers (see EA sections 3.3.2 through 3.4). Therefore we are unable to include the tributaries or the Delta within the experimental population designation geographic footprint. The ESU designation does not depict the range of the species. It defines a population of organisms that is considered distinct for conservation purposes. As an example,

spring-run Chinook commonly occur in the south Delta, the San Francisco Bay, and the ocean, all of which are outside of the ESU boundary.

#118 The Implementing Agencies will continue to coordinate with stakeholders to assess priorities and identify potential funding sources and ability to implement SJRRP actions. However, the information provided by the comment does not raise issues or concerns specific to the environmental analysis within the scope of the EA.

#119 The rule identifies that existing authorities and programs provide the opportunity for NMFS and other SJRRP Implementing Agencies to encourage strategic screening of diversions. This would include a plan to identify unscreened diversions and criteria for prioritization. These have not been developed at this time. The rule allows incidental take exceptions that may occur at any unscreened diversion that is operated in an otherwise lawful manner.

#120 This issue would be analyzed if and when the nonessential designation were proposed to be changed.

#121 The existing 4(d) rule excepting take for adipose fin clipped spring-run is not limited to the Sacramento River. This rule applies to all Central Valley spring-run Chinook, and was intended to except harvest-related take of hatchery fish, thus permitting hatcheries to fulfill the purpose of mitigating lost harvest opportunities resulting from dams. The purpose of the hatchery facility for the SJRRP is to produce spring-run Chinook to assist in establishing a naturally self-sustaining spring-run Chinook population, not to offset harvest losses. The NEP take exceptions do not allow directed take of spring-run Chinook without additional permitting. Hence, the exception for take of adipose fin-clipped fish has been excluded from the NEP area. When these fish leave the NEP area, they will be excepted from take.

The “agreement” referred to was a process for establishing a common understanding that adipose fin-clipped spring-run Chinook would carry the take exception with them to the conservation facility, if they were moved there. This experimental population designation and associated take exceptions provide equivalent regulatory relief for take incidental to otherwise lawful activities.

#122 Comment noted.

#123 NMFS is a party to the Settlement and is acting within its decision making authorities to implement actions called for in the Settlement and by the SJRRSA. (see footnote in EA section 1.2.1)

#124 The comment does not raise issues or concerns specific to the environmental analysis within the scope of the EA. Text has not been revised. (see response to comment 118 above related to similar concerns over funding and comment responses 25 through 28)

#125 See response to comment #114

#126 The rule identifies that existing authorities and programs provide the opportunity for NMFS and other SJRRP Implementing Agencies to encourage strategic screening of diversions. The rule allows

incidental take exceptions that may occur at any unscreened diversion within the NEPA area that is operated in an otherwise lawful manner. See also response to comment #114.

#127 Comment noted.

#128 Text has been revised as suggested.

#129 Comment noted.

#130 The preamble summary has been edited as suggested.

#131 The suggested change has been made in the text (see section 2.1.3.2).

#132 Suggested text has been modified.

#133 Suggested text has been modified. See sections 2.1.3.1 and 4.3.3 in the EA.

#134 Suggested text has been modified. See section 2.1.3.2 in the EA.

#135 The EA has been modified to reflect this comment (see sections 4.3.5, 4.5.6 and 4.6.6 of the EA).

#136 The EA has been modified in response to this comment (see section 3.3.1.3, Figure 12, and Figure 13).

#137 The EA has been modified to reflect this comment (see section 4.3.1.1).

#138 The cumulative effects of flood protection and environmental restoration are discussed in section 5 of the EA.

Chapter 26 of the PEIS/R discusses flood protection actions on a project- and program-level the potential benefits and risks of the implementation of the SJRRP to the flood system. Additionally, planning is occurring, in coordination with the Central Valley Flood Protection Board (CVFPB), to address concerns and make informed decisions related to the implementation of site-specific channel and levee improvement projects under the SJRRP. This includes the formation of a Channel Capacity Advisory Group, coordination with the CVFPB on site-specific projects to specifically discuss challenges related to flood control, and coordination of preliminary design concepts with flood agencies to best implement the program in a way that does not cause adverse impacts to the flood system, its maintenance, or its operations. These plans are not within the scope of the proposed action analyzed in this EA, but as related planning efforts, are appropriate for the cumulative effects analysis, and have been included in section 5 of the EA to address this concern.

#139 Comment noted.

#140 The proposed rule will decrease the requirement for permitting and therefore costs and amount of time to permit these projects located within the experimental population area. The purpose of an experimental population designation is to provide significant regulatory relief to stakeholders located

within designated area. All otherwise legal activities are an exception from take incidental to these activities when conducted within the designated area.

#141 Comment noted.

#142 These areas are included in the population designation to provide regulatory relief to those stakeholders located along these sloughs, channels, floodways, and waterways.

#143 The comment does not raise issues or concerns specific to the environmental analysis within the scope of the EA. Text has not been revised. The proposed rule would not discuss the suitability of habitat conditions. However, the Mendota Pool Bypass and Reach 2B Channel and Structural Improvements Project and the Reach 4B, Eastside Bypass, and Mariposa Bypass Channel Improvement Projects aim to provide additional fish habitat opportunities without reducing the overall capacity of the flood system or impeding its operations. Recent juvenile fall-run Chinook salmon releases for study purposes in the San Joaquin River indicate that conditions in the floodways can be conducive for aspects of spring-run Chinook life history needs.

#144 Those flood control facilities, which are located within the proposed experimental populations area, will be positively impacted by this proposed rule as they will have take exceptions to be able to continue their current and lawful operations due to the experimental population designation.

#145 Yes.

#146 The 4(d) take exceptions are intended to provide that the reintroduction will not impose more than de minimus: water supply reductions, additional storage releases, or bypass flows on unwilling persons or entities diverting or receiving water pursuant to state and Federal water rights, due to such reintroduction.

#147 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. Language has been added to section (5)(ii) to include outside parties in the development of the technical memorandum

#148 This is being done and currently evaluated in accordance with the SJRRP flow schedule as explained in the Settlement and associated Exhibit B..

#149 This is being done and currently evaluated in accordance with the SJRRP flow schedule as explained in the Settlement and associated Phase I projects.

#150 The EA states in sections 2.1.3.1 and 4.6.6 that “the SJRRP will monitor reintroduced spring-run Chinook as part of the program” (also see section 4.4 of the EA). Further, the EA states in Section 5 that monitoring and adaptive management will help ensure that the experimental population of spring-run Chinook is adequately protected and supported by restoration actions implemented through the SJRRP. In addition, technical teams continue to develop monitoring techniques to address this concern.

#151 Comment noted.

#152 Comment noted.

#153 This issue is a possibility under the No Action Alternative. The PEIS/R conservation measures to address recreational effects.

#154 Discussions in regards to fishing regulations will consider this information as well as the status of the PEIS/R conservation measures to address recreational effects.

#155 Comment noted, thank you.

#156 Comment noted, thank you.

#157 Comment noted, thank you.

#158 The barrier is being discussed in further detail in the site specific projects. You are encouraged to become engaged with those processes.

#159 The Final EA has been corrected in section 3.4.2 to state the following: "Potential false pathways created by the bypass and canal systems are Salt Slough, Mud Slough, Bear Creek, Ash Slough, Berenda Slough, Dry Creek, Fresno River, Lone Willow Slough, Fresno Slough (James Bypass)..." The commenter is correct the statewide average annual temperature should have read "... statewide average annual temperatures will be 4.1- 10.4°F higher..." Text has been corrected in section 5 of the EA.

#160 Comment noted

#161 Comment noted.

#162 Comment noted.

#163 See response 1, 2, and 5. The April 28, 2010 meeting was noticed in the Federal Register. See section 2.1.4 of the EA.

#164 A permit application, such as an ESA section 10(a)(1)(A) permit request is required to trigger NEPA. NEPA is the environmental review of a major federal action, such as the action of issuing a permit. Consequently, a federal agency does not conduct a NEPA analysis prior to receipt of a permit or authorization request because there is no action to analyze. See response to comment 1.

This EA does include a full range of reasonable alternatives in addition to the proposed action. Eight alternatives were analyzed in the EA, including no permit issuance under the No-action Alternative. Further, several potential alternatives were considered for analysis in section 2.4 of the EA, but were dismissed because they did not meet the stated purpose and need for the action.

#165 See responses to comments 1, and 60. Also, see section 2.1.4 of the EA.

#166 See responses to comments 1 and 53.

#167 As recommended in the FMP, the SJRRP is evaluating the risk of hybridization and spawning interference between fall- and spring-run Chinook to determine what measures will be necessary. The SJRRP is determining where fall-run and spring-run Chinook will spawn, the timing of spawning in the Restoration Area for each run, and evaluating exclusion methods (e.g. fall-run exclusion weir). The results of these evaluations will help the program determine if a physical separation weir is necessary to protect spawning spring-run Chinook and their eggs. Currently, Hills Ferry Barrier is maintained to prevent fall-run Chinook salmon from entering the Restoration Area.

#168 Other than concerns over hybridization with fall-run Chinook, the program will not attempt to maintain the genetic purity of the donor stocks within the system. The multi-stock approach is designed to maximize the genetic diversity of the founding stock. The salmon that successfully return as adults will spawn in the system and contribute to development of a locally adapted San Joaquin River stock of spring-run Chinook. Section 4.3.2 includes a discussion of methods to prevent hybridization in the Restoration Area.

Clarifying language was added to EA section 1.3.1.2, and the stock selection alternatives are further explained in section 2.2 of the EA.

#169 Limited straying is a natural part of salmonid life history and evolution. Currently there is likely straying to Mill Creek of fish from the Feather River Hatchery, and vice versa. Other than concerns over hybridization with fall-run Chinook, the program will not attempt to maintain the genetic purity of the donor stocks within the system. The multi-stock approach is designed to maximize the genetic diversity of the founding stock. The salmon that successfully return as adults will spawn in the system and contribute to development of a locally adapted San Joaquin River stock of spring-run Chinook.

Clarifying language was added to EA section 1.3.1.2, and the stock selection alternatives are further explained in section 2.2 of the EA.

#170 Other efforts, outside the program, continue to assess and manage Delta conditions for salmon survival. The SJRRP coordinates with these activities on an ongoing and collaborative basis. There are various locations, especially in Reach 1, that would contain suitable spawning habitat for spring-run Chinook, as water temperatures in these locations within the Restoration area are comparable to those water temperatures found at elevations used by Mill Creek salmon.

#171 The determination that a restored San Joaquin River will support spring-run Chinook was conducted through extensive analysis of historic, present, and potential restored conditions presented during the legal proceedings leading up to the Settlement. Expert legal testimony, extensive background studies on water supply and salmon needs may be reviewed at http://restoresjr.net/program_library/05-Pre-Settlement/index.html. The SJRRP is formulated from the Settlement actions which are based on information gathered through the legal proceedings and supplemented by extensive additional temperature and hydrologic modeling that is ongoing since the Settlement was signed, and since Interim Flows were initiated in 2009 and can be reviewed at <http://restoresjr.net/flows/index.html>. This ongoing evaluation will allow the SJRRP to be implemented

in an adaptive management framework, as described in the PEIS/R, to maintain suitable conditions for spring-run Chinook.

It is true that certain habitat conditions on Mill Creek are unique to that watershed and the general habit of salmon returning to their natal stream, over time, can create a unique genetic makeup of that population. However, spring-run Chinook inhabit other streams in the central valley where adequate conditions occur. It is a natural tendency for salmon to stray at a low level which maintains the genetic diversity and resilience of the species. Inclusion of Mill Creek fish in the genetic complement of spring-run Chinook reintroduced to the San Joaquin River will simulate the natural straying tendency of Mill Creek spring-run Chinook.

#172 The SJRRP is currently in the process of developing and implementing activities associated with the restoration of Chinook salmon habitat between Friant Dam and the Merced River confluence (monitoring activities mentioned in sections 2.1.3.1 and 4.4 included). These projects are large and complex and will take several years to complete. Timeframes, while subject to change, associated with these actions are identified in the Draft Framework for Implementation (http://restoresjr.net/program_library/02-Program_Docs/20120619_SJRRP_Framework_for_ImplDRAFT.pdf)/ Surveys for gravel suitability, temperatures, egg survival, and other fisheries elements have been occurring and are available by referencing the SJRRP Monitoring and Analysis Plan, <http://restoresjr.net/flows/ATR/index.html>. Specific actions, such as quantity of riparian habitat, are part of the site-specific channel improvement projects identified in the Settlement and are not within the scope of this EA review for a proposed experimental population designation. Interfacing with humans related to location of spawning area is also not specifically addressed in detail within the scope of this EA, because specific effects are speculative at this time. This issue is identified within the SJRRP's FMP, whose adaptive management components will be utilized as part of the Reintroduction Action (see section 5 of the EA). Funding related to the SJRRP for future gravel augmentation has not been addressed at this time. However, activities such as gravel augmentation may be addressed as part of the Phase 2 Improvements called for in the Settlement, which acknowledges the likely additional channel or structural improvements (such as augmentation of spawning gravel) which may further enhance the success of achieving the Restoration Goal.

#173 See response to comment 1. Also, see section 2.1.4 of the EA.

#174 NMFS made direct contact with all potentially affected tribes for development of this EA (see section 1.7).

#175 Comment noted.

#176 See responses to comments 1 and 2.

#177 See response to comment 2.

#178 See response to comment 4.

#179 Comment noted.

#180 See response to comment 1

#181 Comment noted

#182 See responses to comments 1, 82, 171, and 172.

#183 Comment noted.

#184 In section 4.1 of the Draft EA, it is stated that "The proposed action does not involve construction, changes in water diversions or flows in the Sacramento or San Joaquin river basins, or other physical changes to the environment beyond those associated with the collection of donor stock and their eventual release to the San Joaquin River." As such, the analysis of construction activities is outside the scope of this EA review (see section 2 –PROPOSED ACTION AND ALTERNATIVES). Analyses in the PEIS/R that are relevant to this proposed action are incorporated by reference in section 1.4.1. Section 2.1.3.1 identifies that the proposed action assumes that the SJRRP and Settlement will be implemented and the impacts associated with implementing the SJRRP are analyzed in the PEIS/R. The analysis in this EA evaluates impacts associated with the specific condition of deliberately adding spring-run Chinook to the Restoration Area. The EA takes no position on the impacts of the site specific projects, as the information needed to conduct such analyses is under development by the SJRRP and will be analyzed by the SJRRP under NEPA when it is available and timely.

The differences between the two groups of construction alternatives considered in the PEIS/R have been noted, and future comments relating to the PEIS/R should be addressed to the U. S. Department of the Interior.

Additional text has been added in section 4.3.1.1 [last paragraph] and in section 4.3.5 to address expected impacts to spring-run that may result if the SJRRP is not completed or the reintroduction is not successful.

Regarding the recognition of flood protection as an area to be considered in evaluating the environmental impacts of the proposed action, while the commenter is correct that section 4.6 summarizes the NEP area as including the "main stem of the San Joaquin River from below Friant dam to the confluence of the Merced River" the proposed action would extend the regulatory exceptions to all associated waterways accessible to spring-run Chinook in the NEP area and therefore would include Reach 4, as well as flood management facilities that may be accessible. Further discussion of flows through Reaches 2-5 and the bypass system can be found section 3.4.2 of the Draft EA.

#185 Comment noted.

#186 The regulation does not propose a specific method of analysis to be used in the Technical Memorandum so as to allow consideration of the best available science and technique for this assessment. Genetic testing is an emerging technique that may be considered. The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final.

The language in Paragraph (5)(ii) of the regulation has been modified to include “To the extent feasible, NMFS will develop this technical memorandum in coordination with and with opportunity for comment by interested parties.”

#187 Because of the substantial regulatory relief provided by NEP designations, NMFS does not expect this rule to have any significant effect on recreational, agricultural, or development activities within the NEP area (see section 4.3.5 and section 5 of the EA). Section 4.3.3 also states that mitigation to offset any impacts is being implemented as a measure under the SJRRP PEIS/R (REC-4) that would reduce these potential impacts to an undetectable level, so there will be no impact to recreational fishing as a result of the Proposed Action. The proposed rule would accommodate take considerations associated with regulated fishing when fishing regulations are developed, and the reintroduction of spring-run Chinook would not have any impact on boating opportunities on the San Joaquin River. The comment is not clear regarding pinniped depredation, but NMFS does not identify a correlation between the new regulations for spring-run Chinook reintroduction and pinniped depredation. Pinniped depredation may be an issue related to harvest of salmon, and any impacts would be analyzed at the time that harvest regulations are considered.

#188 Comment noted.

#189 Comment noted.

#190 Because of the substantial regulatory relief provided by NEP designations, NMFS does not expect this rule to have any significant effect on recreational, agricultural, or development activities within the NEP area. See section 4.3.5 and section 5 of the EA.

#191 Comment noted.

#192 Spring-run Chinook are native to the San Joaquin River. In addition the restoration of the San Joaquin River habitat will help restore native fishes to the river including native steelhead trout.

#193 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. The language in sections 5(i) and 5(ii) of the regulation have been modified to clarify this point. NMFS disagrees that the proposed rule recognizes that there are no CV spring-run Chinook salmon in the San Joaquin River Basin. If that were the case the NEP area could include the tributaries to the San Joaquin River (see EA section 3.3.2).

All of the fish directly placed into the experimental population by the program will be tagged and/or fin clipped and have their genetics analyzed. Any progeny from these fish will be genetically identifiable due to the fact that we will know the genetic fingerprint of all fish placed into the river and can track their pedigree. This pedigree will be distinct from other fish found in the Sacramento River.

#194 They will be differentiated on a geographic basis and a genetic basis. For purposes of an experimental population, individuals will be considered part of the experimental populations once they enter into the geographic footprint delineated in the rule and take exceptions specific to the NEP area will apply. Progeny from reintroduced spring-run Chinook will be genetically identifiable due to the fact

that we will know the genetic finger print of all fish placed into the river and can track their pedigree. This pedigree will represent pairings that will be largely distinct from other fish found in the Sacramento River. If Sacramento River fish stray into the NEP area, they will then be considered part of the experimental populations. Because natural straying rates are low, if these fish spawn, their mates would rarely be from the same source stream, hence their progeny would be genetically linked to reintroduced fish.

#195 As identified in the No Action Alternative, Sacramento River salmonids already have access to the San Joaquin River Basin from the Merced River downstream. The SJRRP Restoration Goal is aimed largely at improving flows and conditions for fish, including salmon, upstream of the Merced River to Friant Dam. If Sacramento River spring-run Chinook get into the San Joaquin River not as a result of reintroduction through the SJRRP, section 10011 of the SJRRSA does not apply.

#196 The paragraphs of the regulation have been re-organized so that paragraph 6 of the proposed rule is paragraph 5 in the final. The language in sections 5(i) and 5 (ii) of the regulation has been modified to correlate with the take exceptions specified in section 10011 (c) of the SJRRSA.

#197 The experimental population area does not include the Merced River. The Merced River is part the special take exceptions. Language in the rule has been changed to clarify this.

#198 Comment noted.

#199 Comment noted

#200 See response to comments 107, and, 108

#201 See response to comment 107

#202 See response to comment numbers 1, and 108

#203 Comment noted

#204 Comment noted

#205 See page 2-48 in the PEIR/S as well as chapter 5 which discusses the potential fish impediments caused by the flood control bypasses and structures.

#206 See responses to comments 32 and, 34.

#207 The Deschutes 4(d) rule language names specific entities to include take coverage not only for take that may occur incidental to their otherwise lawful activities, but also to cover take that may occur as a result of research and management activities that these entities are actively engaged in to further the reintroduction of steelhead. The member agencies of the Exchange Contractors are not engaged in research and management activities to further the reintroduction of spring-run Chinook to the San Joaquin River; hence, the language of the regulation for the San Joaquin River is sufficient to address

covered activities for all entities within the NEP area. Naming specific entities in the regulation would be redundant. Section 10009(a) (3) is law and does not need to be re-stated.