

REGULATORY DEVELOPMENTS

U.S. BUREAU OF RECLAMATION FINDS NO SIGNIFICANT IMPACT FOR TRAP AND HAUL OPERATION IN CONJUNCTION WITH SAN JOAQUIN RIVER SETTLEMENT AGREEMENT

In continued implementation of the San Joaquin River Settlement Agreement (Settlement), the U.S. Bureau of Reclamation (Bureau) issued a Finding of No Significant Impact (FONSI) for a proposed trap-and-haul study whereby juvenile fall-run chinook salmon would be trapped and hauled downstream of the San Joaquin River Restoration Program's Restoration Area. During a year when migration habitat does not exist in all reaches of the River, the proposed trap and haul will promote the Settlement's goal of restoring and maintaining fish populations on the River.

Background

The Settlement was reached in October of 2006, in *NRDC, et al., v. Kirk Rodgers, et al.*, and is based on two goals: (1) a Restoration Goal, and (2) a Water Management Goal. 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 Water Management Goal is:

...to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in the Settlement.

In connection with the Settlement's Restoration Goal, in the fall 2014, 510 adult fall-run chinook salmon were moved from lower reaches upstream to Reach 1 (Friant Dam to Gravelly Ford) of the San Joaquin River, and approximately 80 spawning redds (nests where eggs were laid) were documented. Successful migration of salmon hinges upon suitable water temperatures, sufficient and timely flow for

downstream movement, and a passable watercourse—none of which are currently available in some reaches of the River as a result of current water conditions. As a result, the Bureau proposes to trap and haul juvenile chinook from Reach 1 to locations farther down the San Joaquin such that outmigration can occur this year. The Bureau anticipates that if the trap and haul study is successful, similar actions could be used in the future with juvenile salmon when flows limit the connectivity of the river.

The Finding of No Significant Impact

On February 6, 2015, the Bureau released a Finding of No Significant Impact on a proposed trap-and-haul study (Study) to move juvenile fall-run salmon downstream of the San Joaquin River Restoration Program's Restoration Area.

Specifically, the Study will capture fish from February 2015 through June 2015 at four locations on the San Joaquin River: (1) Scout Island, (2) Milburn Avenue, (3) Highway 99; (4) West Herndon Avenue. If Friant Dam flows increase to more than 300 cubic feet per second (cfs), the Bureau may utilize additional traps near Highway 99. Trapped juvenile salmon will be netted, placed in five-gallon buckets, and moved to a 300 gallon fish tank on a standard truck, where they will be driven to a designated release site. Release sites will be determined by water temperature, flow and river connectivity, and may include the confluence of the San Joaquin and Merced rivers near Newman or the confluence of the San Joaquin and Tuolumne rivers near Patterson.

The Bureau found the Study does not result in significant impacts because, *inter alia*: (1) the collection structures would not significantly alter hydrodynamics in the river channel in light of the anticipated low flows, and any increased turbidity would be minor; (2) the Study would benefit fall-run chinook salmon by transporting them to locations where ocean migration may resume; and (3) the location of fish collection structures is downstream from the location of most canoers and kayakers.

In addition, the Bureau proposed the following measures to minimize potential impacts:

1. mechanized equipment will not operate within 100 feet of elderberry shrubs and no work will be done within 20 feet of elderberry shrubs;
2. visible inspections for San Joaquin kit foxes and dens will occur prior to fish collection and release;
3. 100 foot buffer around backwater sloughs would be maintained when installing fish collection structures to avoid areas suitable for giant garter snakes;
4. The Bureau would coordinate with any releases of 2015 spring run releases of chinook; 2014 fall run chinook are not expected to be present in the area;

5. Signage, lighting and fencing would be utilized to alert boaters to the presence of collection structures; and

6. Surveys would be completed for certain bird species and pond turtles to ensure additional protected species are not impacted.

Conclusion and Implications

With limited water availability and low stream flows, the Bureau continues to maintain the distinct goals of Water Management and Restoration Goals of the Settlement, here by utilizing trapping and hauling of juvenile chinook salmon. If successful, the Study may serve as a model for future actions to preserve juvenile salmon when the San Joaquin's connectivity to the ocean is reduced or eliminated. (David E. Cameron, Meredith Nikkel)

**Reprinted with permission from the California Water Law & Policy Reporter,
Copyright © 2015-2016, Argent Communications Group. All rights reserved.**

Further copying requires additional written consent:

P.O. Box 506, Auburn, CA 95604; E-mail: reporters@argentco.com."