

# **Appendix E: Concurrence Memo from the U.S. Fish and Wildlife Service**





# United States Department of the Interior



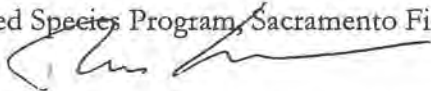
FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825-1846

In Reply Refer to:  
08ESMF00-  
2017-I-0217

JAN 04 2017

## Memorandum

To: David Hyatt, Supervisory Biologist, Resources Management Division, Bureau of Reclamation, South-Central California Area Office, Fresno, California

From: Chief, San Joaquin Division, Endangered Species Program, Sacramento Fish and Wildlife Office, Sacramento, California 

Subject: Consultation on the Interim Renewal of Water Service Contracts for Cities of Avenal, Coalinga, Huron and California Department of Fish and Wildlife 2017-2019

This memorandum is in response to the U.S. Bureau of Reclamation's (Reclamation) October 28, 2016 request for concurrence with the determination that the proposed execution of four Central Valley Project (CVP) Interim Renewal Contracts (IRCs), for the cities of Avenal, Coalinga, Huron and the California Department of Fish and Wildlife, from March 1, 2017 to February 28, 2019 may affect, but is not likely to adversely affect (NLAA) the federally-listed as endangered blunt-nosed leopard lizard (*Gambelia sila*), California jewelflower (*Caulanthus californicus*), San Joaquin kit fox (*Vulpes macrotis mutica*), and San Joaquin wooly-threads (*Mololopia congdonii*). The cities Coalinga and Huron and CDFW are located in western Fresno County; the city of Avenal is located in western Fresno and Kings counties. Your request was received in our office on October 31, 2016. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The Federal action on which we are consulting is the two year-renewal of CVP IRCs for the San Luis Unit cities of Avenal, Coalinga, and Huron, and CDFW (SLU Cities IRCs) beginning on March 1, 2017 and ending February 28, 2019. Pursuant to 50 CFR 402.12(j), Reclamation submitted a Biological Evaluation (BE) for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is NLAA the blunt-nosed leopard lizard, California jewelflower, San Joaquin kit fox, and San Joaquin wooly-threads. No critical habitat has been designated for these species. Reclamation has determined that the renewal of IRCs for the SLU Cities will have no effect on the Federally-listed species or critical habitats identified in Appendix A, therefore, those species are not considered further in this document.

Reclamation has requested initiation of informal consultation under the Act. In considering your request, we based our evaluation on the following information: (1) the October 28, 2016 request for consultation, (2) a BE for these IRCs dated October 2016 (3) Central Valley Project Habitat Mapping Program (CVPHMP) land use change maps between 2006 and 2011 for CVP IRC districts provided by Reclamation's Regional Office to the Service on January 6, 2016, (4) the City of

Coalinga's General Plan Update 2005-2025 dated June 2009 and Housing Element Update 2015-2023 Mitigated Negative Declaration and Initial Study dated December 2015, (5) the Kings County Housing Element 2016-2024 dated January 2016, (6) the Fresno County Multi-Jurisdictional Housing Element 2015-2023 dated August 2015, (7) CEQAnet (the online searchable environmental database of the State Clearinghouse within the Office of Planning and Research) searches for each of the Contractors considered in this consultation, (8) information provided by Reclamation's South Central California Area Office for the 2007, 2010, 2013, 2015 and 2017 consultations involving SLU Cities IRCs, and other information available to the Service.

The Service's consultations on IRCs have addressed the diversions of water at prescribed diversion points and times for the use of that water on a specified land area (the contractors' service area). All IRCs, while identifying a full contract amount, recognize that the delivery of full contract amount is subject to availability of water and other obligations of the CVP (such as Central Valley Project Improvement Act (CVPIA) and consultation requirements under the Act).

Reclamation has requested concurrence with a NLAA determination for the blunt-nosed leopard lizard, California jewelflower, San Joaquin kit fox, and San Joaquin wooly-threads. The information provided for this consultation, as well as the short duration of this project, and land conversion commitment in the letters from the SLU Cities (described below), provides the basis for the Service to concur with Reclamation's determination that these IRCs are NLAA the blunt-nosed leopard lizard, California jewelflower, San Joaquin kit fox, or San Joaquin wooly-threads.

The Service's concurrence with a NLAA determination for this action is based in part on a land conversion commitment provided in letters from the SLU Cities (Appendix B) stipulating that use of CVP water for new Municipal & Industrial (M&I) uses will not occur until compliance with the Act has been confirmed. Such confirmation shall be consistent with a process elaborated in the 2013 Final Environmental Assessment/Initial Study for the 25-Year Transfer and Groundwater Pumping Project of the San Joaquin Exchange Contractors and the U.S. Bureau of Reclamation, pages F-29 through F-30 (Appendix C).

Reclamation's determination that the IRCs considered in this consultation will NLAA the blunt-nosed leopard lizard, California jewelflower, San Joaquin kit fox, and San Joaquin wooly-threads is based on Reclamation's conclusion that CVP contract deliveries do not result in land use changes that would adversely affect federally-listed species or critical habitat. In the previous consultation completed for these IRCs (File Number 2014-I-0585), the Service requested that prior to the next renewal of these IRCs Reclamation would revise and update the CVPIA CVPHMP to validate the conclusion that CVP IRCs will not result in land use changes within the districts. Reclamation prepared and shared its 2016 CVPHMP maps and tables of habitat changes (based on information from the National Land Cover Database<sup>1</sup> comparing land use data from 2006 with 2011) with the Service on January 6, 2016. For this consultation Reclamation also analyzed potential land use changes using aerial imagery since the last SLU Cities IRC consultation to ensure existing operations were being conducted in a manner compatible with the continued existence and recovery of listed or proposed species, or designated or proposed critical habitat, pursuant to the Act and environmental commitments in Biological Opinion on Implementation of the CVPIA (CVPIA BiOp, File Number 98-F-0124). Reclamation compared 2010 to 2014 to determine if there had been any changes in land use within the CVP contract service areas for the SLU Cities (California Department of

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<sup>1</sup> Information on the National Land Cover Database is available at: <http://www.mrlc.gov/>

Conservation 2014, Google Inc. 2015). Based on this comparison, Reclamation determined that there were no land use changes to potentially suitable habitat for federally-listed species (i.e. from/to grasslands, wetlands, barren, forest, or shrub) within the CVP service areas for Avenal, Coalinga or Huron.

Reclamation along with the Service affirm their commitment to continue to work collaboratively to interpret and evaluate the 2016 CVPIA Mapping and to examine sensitive land use changes revealed by said mapping. This commitment is made to comply, in part, with the CVPIA BiOp, pages 2-62 through 2-64 (D. Hyatt email to the Service dated February 23, 2016).

### Background and Related Consultations

Our previous consultation on SLU Cities IRCs (File Number 2014-I-0585) included a summary of consultations on CVP contract renewals that the Service has completed that are related to these IRCs. We incorporate the background and summary of related consultations here by reference.

### Project Description

The proposed action is the execution of IRCs for SLU Cities and CDFW from March 1, 2017 to February 28, 2019 in the amounts and purposes specified in Table 1, and the acreages identified in the description for each Contractor below. The IRCs provide delivery of “a maximum quantity of water subject to hydrological and regulatory constraints for up to the full contract amounts,” as described in Reclamation’s Memorandum and attachments on San Luis Unit long term contract renewals (SLU LTCR) dated September 27, 2005. The effects of IRCs considered in this NLAA concurrence memo are related solely to the delivery of water and associated land use impacts.

**Table 1. CVP Interim Renewal Contract Amounts and Service Areas for Panoche and San Luis Water Districts.**

CVP Contractor	Water Service Contract Amount (acre-feet)	Primary Contract Use	Contract Period
City of Avenal	3,500	M&I <sup>1</sup>	03/01/17-02/28/19
City of Coalinga	10,000	M&I <sup>1</sup>	03/01/17-02/28/19
City of Huron	3,000	M&I <sup>1</sup>	03/01/17-02/28/19
CDFW (Mendota Wildlife Management Area)	10	M&I <sup>1</sup>	03/01/17-02/28/19

<sup>1</sup>Municipal and Industrial

No changes to the SLU Cities CVP service areas or water delivery amounts are part of the Proposed Action. The CVP IRC water can only be delivered in the pink areas shown on Figures 1 through 3, the other portions of the Cities of Avenal and Coalinga cannot receive CVP water. Water from these IRCs can be delivered in quantities up to the contract total, although it is likely that deliveries will be less than the contract total.

Water deliveries under the four proposed IRCs can only be used within each designated contract service area (Figures 1 through 3; only the three cities are shown, DFW only uses water at their management headquarters at Mendota Wildlife Area). The CVP IRC water can only be delivered in the pink areas shown on Figures 1 through 3, the other portions of the Cities of Avenal and Coalinga cannot receive CVP water. Water from these IRCs can be delivered in quantities up to the contract total, although it is likely that deliveries will be less than the contract total.

Based on telephone conversations with and e-mails from Reclamation for the current and previous IRCs, and from the BE for the proposed action, we understand the following regarding the SLU Cities for this consultation:

*City of Avenal:* IRC water will be delivered through existing infrastructure to existing M&I development. IRC water will be applied only to those lands identified in Figure 1 as eligible to receive CVP water (17,423 acres). The area in the City's Sphere of Influence (SOI) that is outside of the area identified in the BE as eligible to receive CVP water is not part of the proposed action and not considered in this consultation.

The City of Avenal's water supply source is CVP water from the San Luis Canal. All of Avenal's CVP water supply is used for M&I purposes. Avenal supplies Avenal State Prison with 1,411 acre-feet of water annually. The City of Avenal also provides water service to the urbanized portions of Avenal and a limited number of connections in the northern portion of the community. Avenal does not pump any groundwater. The poor quality of the groundwater and its high concentrations of sulfate, nitrates, and sodium preclude its use for domestic purposes. The City of Avenal's water needs analysis completed by Reclamation in July 2000 estimated that there would be an unmet demand of 391 acre-feet for 2025 with an estimated population of 12,000. The U.S. Census Bureau's website (<http://quickfacts.census.gov/qfd/states/06/0603302.html>) lists a population of 13,308 (2014 estimate).

*City of Coalinga:* IRC water will be delivered through existing infrastructure to existing M&I development. IRC water will be applied only to those lands identified in Figure 2 as eligible to receive CVP water within the City's SOI as depicted in the City of Coalinga General Plan Update (dated June 2009) and to the existing rural M&I users. The acreage of the SOI is 6,170 acres (from the 2009 General Plan Update). We understand from Reclamation that a small area within the SOI is outside the area eligible to receive CVP water, and that the difference in acreage between the 5,248 acre SOI identified in the 2004 SLU LTCR Biological Assessment and the 6,170 acre SOI in the 2009 General Plan Update, comprising 922 acres, is the small area (identified by Reclamation in an e-mail dated January 30, 2012) outside of the area that is eligible to receive CVP water. We therefore understand the acreage to be considered in this consultation for the City of Coalinga IRC is 5,248 acres.

The City of Coalinga's sole water supply source is CVP water obtained at a single turnout from the Coalinga Canal, which is fed by the San Luis Canal. Westlands Water District operates the Federally-owned pipeline, and the City of Coalinga pays an O&M charge to Westlands Water District for conveying and delivering its CVP water supply. The City of Coalinga supplies potable water to almost all of the residences within its service area. The City of Coalinga's water needs analysis completed by Reclamation in July 2000 estimated that there would be no unmet demand for 2025 (for a projected population size of 27,000). The U.S. Census Bureau's website (<http://quickfacts.census.gov/qfd/states/06/0614274.html>) lists a population of 16,452 (2014 estimate) and the Draft General Plan Update 2005-2025 projects a population of 22,185.

*City of Huron:* IRC water will be delivered through existing infrastructure to existing M&I development. IRC water will be applied only to those lands identified in Figure 3 as eligible to receive CVP water (830 acres).

The City of Huron's only water supply is CVP water received from a lateral connection to the San Luis Canal. Water is transported to Huron via Lateral 27, which is operated by Westlands Water District. Huron pays Westlands Water District O&M costs for conveyance and delivery of their CVP supply. Huron does not pump groundwater. Groundwater in the area is very deep, of poor quality and almost non-potable. The City of Huron's water needs analysis completed by Reclamation in July 2000 estimated that there would be no unmet demand for 2025 (for a projected population size of 12,810). The U.S. Census Bureau's website (<http://quickfacts.census.gov/qfd/states/06/0636084.html>) lists a population of 6,806 (2014 estimate).

*CDFW:* IRC water (10 acre-feet/year) will be delivered to CDFW for domestic use at the headquarters of the Mendota Wildlife Management Area. The CVP supply is the CDFW's only long-term water supply used at this facility.

#### Conservation Measure

As denoted in the BE for these IRCs, "The three Cities have agreed (refer to attached letters) not to deliver their CVP water to undeveloped lands without evidence of compliance with the ESA." Letters from each SLU city committing to this conservation measure are provided in Appendix B.

Figure 1. CVP Contract Service Area Boundary for the City of Avenal

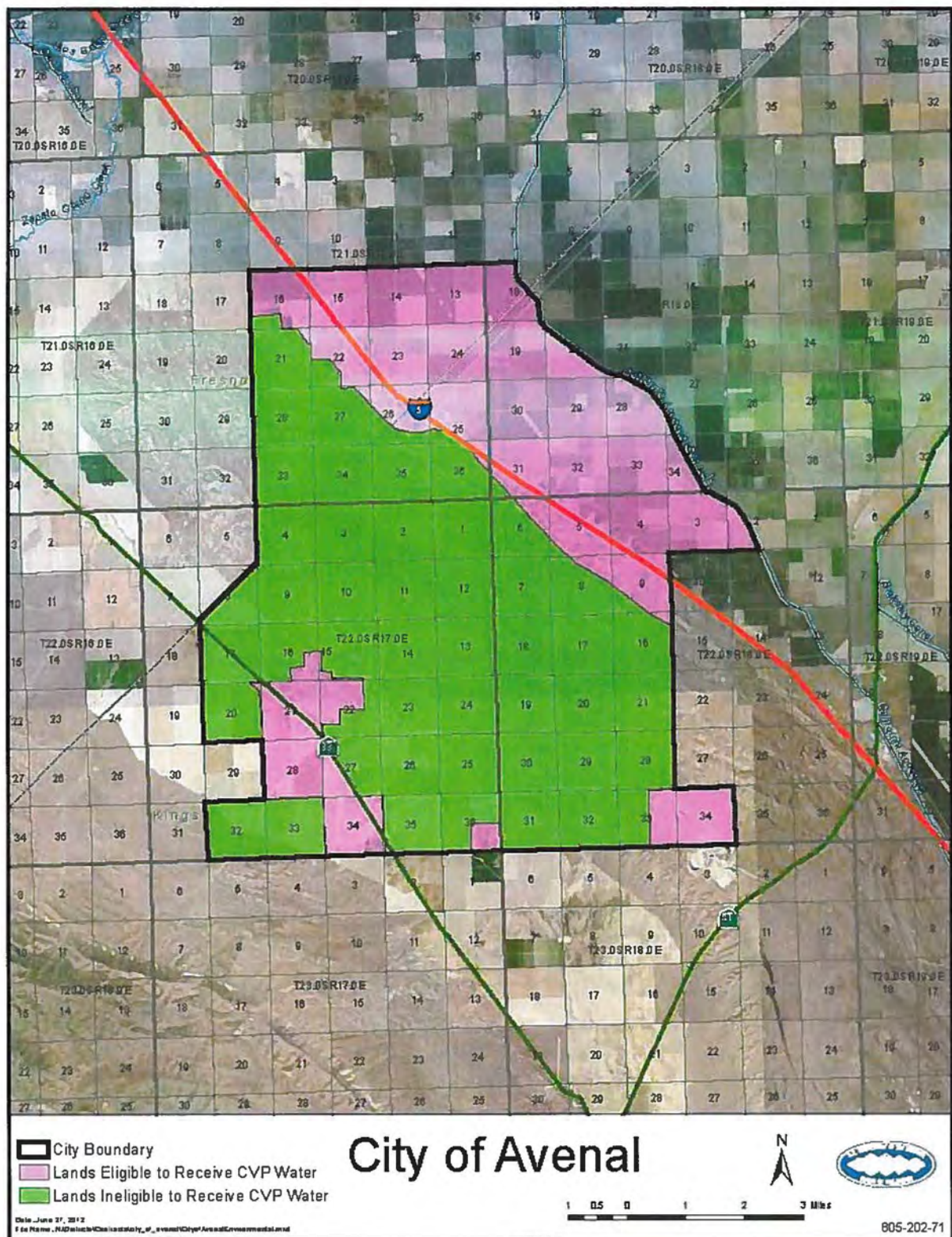




Figure 2. Map of lands eligible and ineligible to receive City of Coalinga

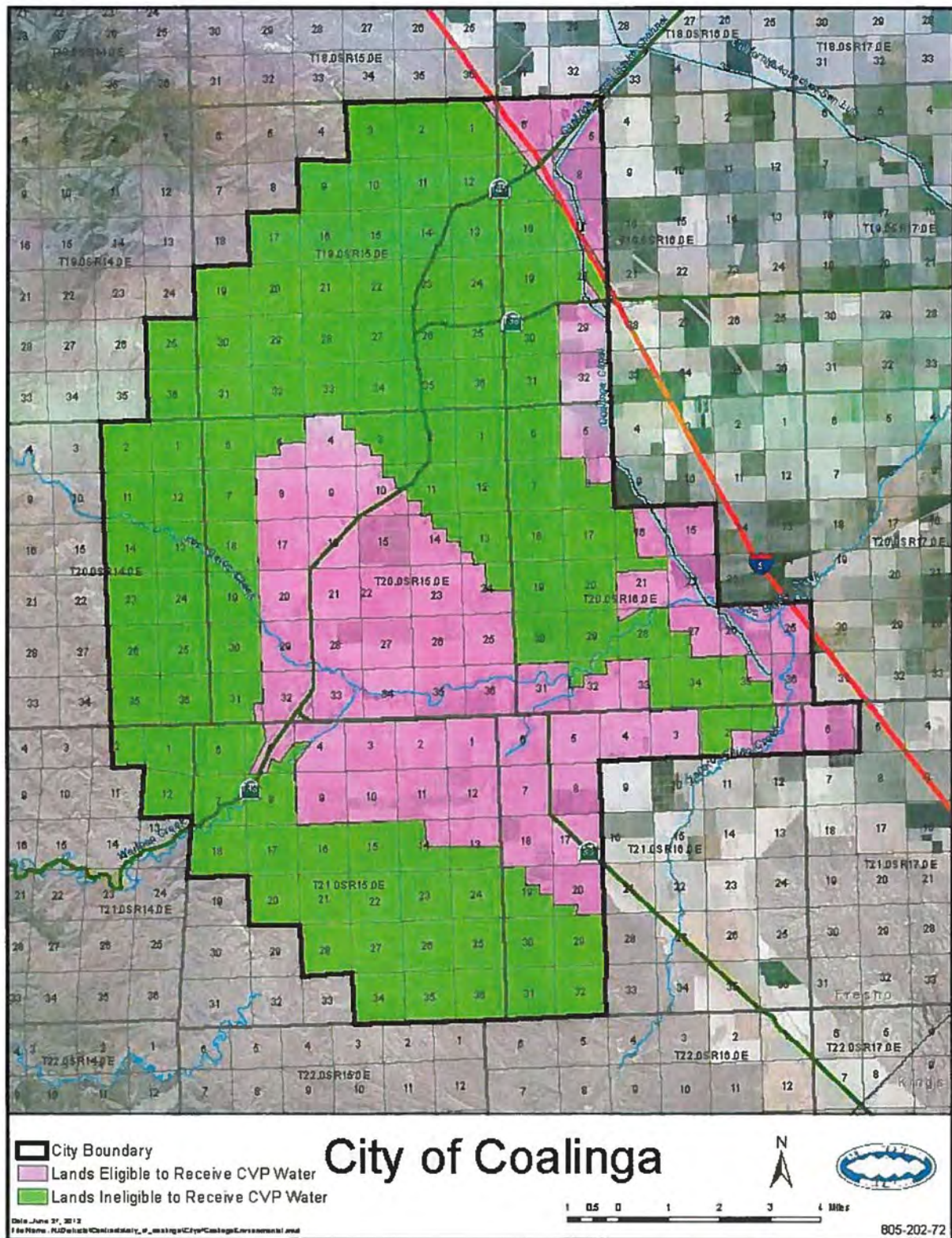
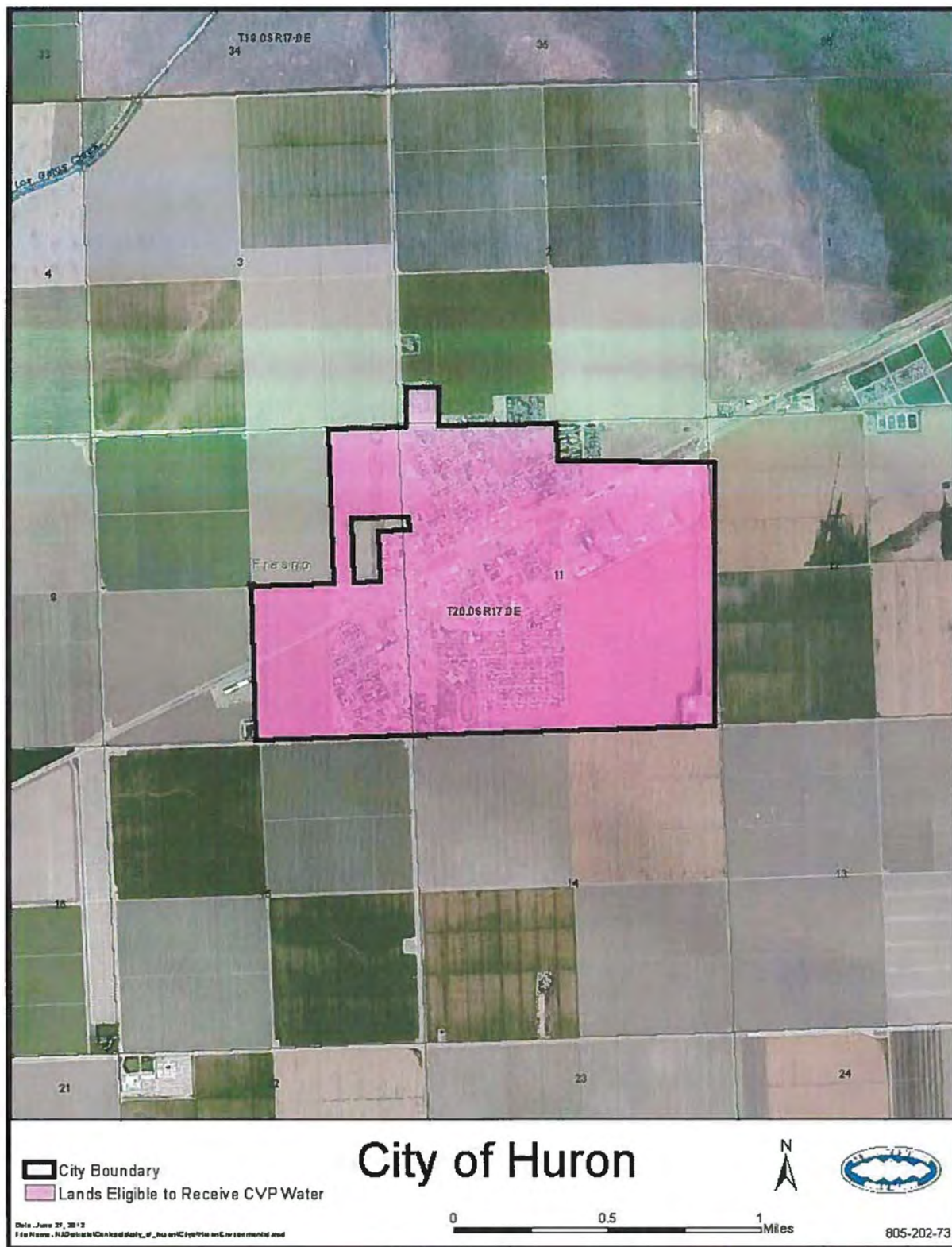


Figure 3. CVP Contract Service Area Boundary for the City of Huron



## **Effects of the Action**

### Direct Effects

We address the effects of future implementation of IRCs, including the effects of interrelated and interdependent actions, as effects of the Federal action, not as part of the environmental baseline. There will be no direct effects to listed species associated with the proposed execution of the interim contracts considered in this biological opinion for the 24 month period beginning March 1, 2016, through February 28, 2018. The proposed Federal action will continue deliveries of water to the SLU Cities IRC contractors. No construction of new facilities, installation of new structures, or modification of existing facilities is required or planned. Execution of the SLU Cities IRCs are the actions that allow for the delivery of the Federal CVP water, and thus any effects anticipated would be indirect, rather than direct.

### Indirect Effects

Indirect effects are effects caused by or result from the proposed action, will occur later in time, and are reasonably certain to occur, and would not occur “but for” the project. Indirect effects may also occur outside of the area directly affected by the action. Indirect effects to listed species or suitable habitat have likely occurred as a result of the delivery of CVP water to the individual water districts or municipalities during the life of the existing or previous water delivery contracts. Many of these activities took place prior to implementation of the Act in 1973 and prior to the listing of the species considered in this consultation and were not subject to the provisions of the Act. Land use decisions subsequent to that time have continued to result in adverse effects to the species and suitable habitat and most have not been authorized incidental take under section 9 or 10 of the Act.

### Land Use Changes

Within the Cities of Avenal, Coalinga, and Huron, a CEQAnet search of actions between August 2014 (the last renewal used records through July) and May 2016 revealed that a handful of projects were approved during that time (one in Avenal in 2015, one in Huron in 2016, and one in 2014 and three in 2015 in Coalinga), and that the approved projects appeared to have little or no impact on natural lands. The project in Avenal was for planning work for a transmission line replacement; two of the Coalinga projects were for housing element and zoning ordinance updates and therefore have no impacts in and of themselves. The other two were a dance hall/restaurant within an existing building, and a replacement of an above-ground steel reservoir. The Huron project was for adopting the housing element of Huron’s general plan. As identified in the BE, none of these projects would have impacted any native land or agricultural land that would be used by federally-listed species. It is not likely that future development projects in the SLU Cities would be permitted and groundbreaking to commence during the IRC contract period under consideration.

### **Cumulative Effects**

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Numerous activities continue to result in loss and degradation of habitat used by listed threatened and endangered species in the action area for this consultation. Habitat loss and degradation affecting both animals and plants continues as a result of urbanization, oil and gas development, road and utility right-of-way management, flood control projects, livestock grazing, and continued agricultural expansion. Listed animal species also are affected by poisoning, shooting, increased

predation associated with human development, and reduction of food sources. All of these non-federal activities are expected to continue to adversely affect listed species in the action area.

Conversion of land for agricultural purposes continues to be the most critical threat to listed species. Although the increment of habitat loss attributable to urban development appears to be increasing, these activities remain less significant than agriculture for most species. Agricultural conversion is generally not subject to any environmental review and is not directly monitored or regulated. In addition, CVP water is used for groundwater recharge by some districts in the San Joaquin Valley. Such recharge may allow nearby landowners to pump groundwater for uses that may affect listed species.

Cumulative effects on many species are severe enough to substantially reduce the likelihood of long-term survival and recovery of these species. The IRCs and ongoing CVP operations contribute to the threat to these species.

Many of the private actions that will occur as an indirect effect of receiving CVP contract supply would also occur without the Federal water deliveries. Those actions that will occur without Federal water deliveries from the proposed action will result in cumulative effects.

### **Conclusion**

The information Reclamation provided for this consultation, including the written commitments from the SLU Cities in Appendix B, and the short duration of this project provides a sufficient biological basis for the Service to concur with Reclamation's determination that the IRCs for SLU Cities are NLAA the the blunt-nosed leopard lizard, California jewelflower, San Joaquin kit fox, and San Joaquin wooly-threads.

Our concurrence with your NLAA determination concludes this consultation for this action. Therefore, unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the Act is necessary. If you have any questions on the biological opinion, please contact Thomas Leeman, Chief, San Joaquin Valley Division, at the letterhead address or at (916) 414-6544.

Attachments

## Literature Cited

City of Coalinga. June 2009. City of Coalinga General Plan 2005 – 2025. Coalinga, CA, 208 pp.

Available at:

[http://www.coalinga.com/uploads/1266974523\\_CoalingaGeneralPlan\\_06.2009\\_final.pdf](http://www.coalinga.com/uploads/1266974523_CoalingaGeneralPlan_06.2009_final.pdf)

City of Coalinga. December 2015. City of Coalinga Housing Element 2015-2023, Initial Study Mitigated Negative Declaration. Coalinga, CA, 65 pp. Available at:

[http://www.coalinga.com/uploads/1450400667\\_Coalinga\\_HE\\_D\\_IS.pdf](http://www.coalinga.com/uploads/1450400667_Coalinga_HE_D_IS.pdf)

Fresno County. August 2015. Fresno Multi-Jurisdictional 2015-2023 Housing Element, A Regional Plan for Addressing Housing Needs. Housing and Community Development Draft. Fresno, CA, 952 pp. Available at: [http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/housing-element-documents/fresno\\_county\\_5th\\_draft081215.pdf](http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/housing-element-documents/fresno_county_5th_draft081215.pdf)

Kings County. January 2016. 2016 – 2024 Housing Element County of Kings, City of Avenal, City of Corcoran, City of Hanford, and City of Lemoore. Hanford, CA, 165 pp. Available at:

<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/housing-element-documents/hanford-5th-adopted011216.pdf>

[USBR] U.S. Bureau of Reclamation. October 2016. Biological Evaluation for the Central Valley Project Interim Renewal Contracts for Cities of Avenal, Coalinga, Huron, and Calif. Department of Fish & Wildlife, 2017-2019. USBR, Mid-Pacific Region, South-Central California Area Office, Fresno CA, 27 pp. and 3 appendices.

**Appendix A. Federally threatened and endangered species and/or critical habitat potentially within the Action Area that Reclamation has determined would not be affected by the proposed action.**

Common Name	Scientific Name	Federal Status	Critical Habitat
California condor	<i>Gymnogyps californianus</i>	Endangered	Designated
California red-legged frog	<i>Rana draytonii</i>	Threatened	Designated
California tiger salamander Central CA DPS	<i>Ambystoma californiense</i>	Threatened	Designated
delta smelt	<i>Hypomesus transpacificus</i>	Threatened	Designated
giant garter snake	<i>Thamnophis gigas</i>	Threatened	None
giant kangaroo rat	<i>Dipodomys ingens</i>	Endangered	None
Tipton kangaroo rat	<i>Dipodomys nitratooides nitratooides</i>	Endangered	None
vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	Threatened	Designated

**Appendix B.**

9/30/2016

DEPARTMENT OF THE INTERIOR Mail - RE: Interim Renewal of Contract No. 14-06-200-4619-IR4 - City of Avenal



Leal, Erma <eleal@usbr.gov>

**RE: Interim Renewal of Contract No. 14-06-200-4619-IR4 - City of Avenal**

1 message

Melissa W <avenalcm@cityofavenal.com>  
To: "Leal, Erma" <eleal@usbr.gov>

Fri, Sep 30, 2016 at 10:45 AM

Hi Erma:

Thank you for clarification.

The purpose of this e-mail is to state that the City of Avenal desires to renew Interim Renewal Contract 14-06-200-4619-IRA for a period of two (2) years beginning March 1, 2017 through February 28, 2019.

Please accept this e-mail as the City of Avenal's confirmation that we will not deliver Central Valley Project water to development or converted habitat without confirmation from Reclamation or other evidence that compliance with the Endangered Species Act has occurred with respect to the subject land either through Section 7 or Section 10 of the Act, by the City of Avenal.

Thank you.

Melissa Whitten, City Manager

City of Avenal

919 Skyline Blvd.

Avenal, CA 93204

559-386-5766

Appendix B (continued)



February 11, 2016

Erma Leal  
Department of Interior/Bureau of Reclamation  
1243 N Street  
Fresno, CA 93721-1813

Re: Interim Renewal Contract No. 14-06-200-4173A-IR4

Dear Mrs. Leal,

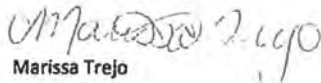
The Interim Renewal Contract No. 14-06-200-4173A-IR4 for the City of Coalinga expires on February 28, 2017. Subsection (a) of Article 2 of the Existing Interim Renewal Contract states (in part): "...this interim renewal contract will be renewed, upon request of the Contractor, for successive interim periods each of which shall be no more than two (2) years in length."

The purpose of this letter is to request that Interim Renewal Contract 14-06-200-4173A-IR4 be renewed for a period of two (2) years beginning on March 1, 2017, through February 28, 2019.

In addition, I would like to confirm that the City of Coalinga will not deliver Central Valley Project water to development or converted habitat without confirmation from Reclamation or other evidence that compliance with the Endangered Species Act has occurred with respect to the subject land either through Section 7 or Section 10 of the Act.

Thank you.

Sincerely,

  
Marissa Trejo  
City Manager



Appendix B (continued)

8/2/2016

DEPARTMENT OF THE INTERIOR Mail - RE Request for Interim Renewal Contract - City of Huron



Leal, Erma <eleal@usbr.gov>

**RE: Request for Interim Renewal Contract - City of Huron**

1 message

Miriam Martínez <utility@cityofhuron.com>  
To: "Leal, Erma" <eleal@usbr.gov>

Wed, Feb 17, 2016 at 10:36 AM

Good Morning Erma,

The City of Huron wants to renew the Interim Renewal Contract No. 14-06-200-7081-IR4 that will expire on February 28, 2017. Subsection (a) of Article 2 of the Existing Interim Renewal Contract states (in part): "... this interim renewal contract will be renewed, upon request of the Contractor, for successive interim periods each of which shall be no more than two (2) Years in length".

Also the City of Huron, will not deliver Central Valley Project water to development or converted habitat without confirmation from Reclamation or other evidence that compliance with the Endangered Species Act has occurred with respect to the subject land either through Section 7 or Section 10 of the Act, by the City of Huron.

Thank you,

Miriam E. Martinez

Accounting Technician

**City of Huron**

Finance Department

36311 Lassen Ave.

P.O. Box 339

Huron, CA 93234-0339

Phone: 1.559.945.3020 Option 1

Fax: 1.559.945.2609

utility@cityofhuron.com

ENVIRONMENTAL COMMITMENT PROGRAM.pdf  
894K

### Appendix C.

Excerpt from the January 2013 Final Environmental Assessment/Initial Study for the 25-Year Transfer and Groundwater Pumping Project of the San Joaquin Exchange Contractors and U.S. Bureau of Reclamation, pages 2-17 through 2-18 and copied for reference below:

Use of transferred water for new M&I uses will not occur until (1) compliance with CESA and with CEQA, including analysis and mitigation for other sensitive biological resources, has been confirmed with the DFG and (2) ESA compliance for such M&I uses has been demonstrated by one of the following methods:

1. A letter or memo from the Service stating that the use will not result in adverse effects on listed or proposed species or proposed or designated critical habitat.
2. An incidental take permit for the M&I use issued by the Service pursuant to section 10(a)(1)(B) of the ESA.
3. A non-jeopardy, non-adverse modification or destruction biological opinion, or a biological opinion with a reasonable and prudent alternative, or a memo/letter concurring with a “not likely to adversely affect” determination issued by the Service to the lead Federal agency having jurisdiction over the project(s) using the transferred water for M&I use.

A properly documented “no effect” determination made by the Federal agency(ies) having jurisdiction over the project(s) using the transferred water for M&I use. Commitment 8 on page 2-70 of the CVPIA Programmatic Biological Opinion requires Reclamation to “provide necessary information to the Service’s SFWO Endangered Species Division” on Central Valley Project actions “where a determination of no effect has been made, sufficiently in advance, to enable the Service’s review”. Reclamation would accomplish this via the current SCCAO practice of immediately notifying Service of the availability of NEPA documents for public review and comment. Because any significant impacts from M&I use would be mitigated by the M&I projects before a water transfer is approved and water is actually provided, the proposed project has no significant impacts on the environment that are related to such transfers.