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United States Department of the Interior
Fish and Wildlife Service
Ecological Services
Carlsbad Fish and Wildlife Office
2730 Loker Avenue West
Carlsbad, California 92008



In Reply Refer To: FWS-SD-808.2

MAR 21 2001

Mr. Michael G. Ritchie, Division Administrator
Federal Highway Administration
California Division
980 Ninth Street, Suite 400
Sacramento, California 95814-2724

Re: Confirmation of the Conference Opinion for the Replacement of West Rincon Creek Bridge, Along State Route 76, in Northern San Diego County, California.

Dear Mr. Ritchie:

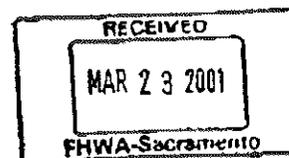
On October 12, 2000, the Fish and Wildlife Service (Service) issued a biological/conference opinion for the replacement of West Rincon Creek Bridge, along State Route 76, in northern San Diego County (1-6-00-F-808). This biological/conference opinion addressed the effects of the project on the Federally listed endangered arroyo toad (*Bufo californicus*) and proposed critical habitat for the arroyo toad. On February 7, 2001, the Service issued the final rule designating critical habitat for the arroyo toad (*Federal Register* 66: 9414-9474). A correction to the maps presented in the final rule was subsequently published on March 7, 2001 (*Federal Register* 66: 13656-13671). The proposed bridge replacement is located within Critical Habitat Unit 14.

Since the issuance of the biological/conference opinion, there have been no significant changes in the proposed action or in the information used during the consultation/conference. The Service, therefore confirms the biological/conference opinion as the biological opinion for the replacement of West Rincon Creek Bridge.

If you have any questions or concerns about this consultation, please contact Jesse D'Elia of my staff at (760) 431-9440. Please refer to our log number, FWS-SD-808.2, in any future correspondence regarding this project.

Sincerely,

[Handwritten Signature]
for Nancy Gilbert
Assistant Field Supervisor



Richardene Kelsay



United States Department of the Interior
Fish and Wildlife Service
Ecological Services
Carlsbad Fish and Wildlife Office
2730 Loker Avenue, West
Carlsbad, CA 92008



In Reply Refer To: 1-6-00-F-808

Mr. Michael G. Ritchie
Division Administrator
Federal Highway Administration
California Division
980 Ninth Street, Suite 400
Sacramento, CA 95814-2724

OCT 12 2000

Attn: Mr. Jeff Lewis, Senior Transportation Engineer

Re: Biological/Conference Opinion Concerning the Replacement of West Rincon Creek
Bridge Along State Route 76 in Northern San Diego County, California

Dear Mr. Ritchie:

This document transmits the Fish and Wildlife Service's (Service) biological/conference opinion based on our review of the proposed replacement of West Rincon Creek Bridge along State Route 76 in northern San Diego County, California, and its effects on the arroyo toad (*Bufo californicus*) and its proposed critical habitat, in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Your May 24, 2000, request for formal consultation was received on May 30, 2000.

This biological/conference opinion is based on: (1) information provided in your May 5, 2000, letter; (2) the July 1999 *Arroyo Southwestern Toad Survey Report*; (3) the January 27, 1999, *Draft Supplemental Project Report*; (4) a July 21, 2000, field investigation conducted by Service staff; (5) your September 11, 2000, letter requesting formal conference; and (6) other information available in our files. A complete administrative record of this consultation is on file at the Service's Carlsbad Field Office.

CONSULTATION HISTORY

Formal consultation was requested in a May 24, 2000, letter from the Federal Highway Administration (FHWA) to the Service. The Service received the FHWA's request for initiation on May 30, 2000, and acknowledged initiation of formal consultation in a June 23, 2000, letter to the FHWA. On July 21, 2000, the Service, along with a representative from the California Department of Transportation (Caltrans), conducted a site-visit to determine current environmental conditions and to assess potential effects to the arroyo toad. The Federal Highway Administration (FHWA) requested formal conference on proposed critical habitat for the arroyo toad in a letter dated September 11, 2000.

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BIOLOGICAL/CONFERENCE OPINION

DESCRIPTION OF THE PROPOSED ACTION

West Rincon Creek Bridge is located in the San Luis Rey River Basin, approximately 19 road kilometers (12 miles) east of Interstate 15 (I-15), on State Route 76 (SR-76), in northern San Diego County, California. West Rincon Creek is a first order tributary stream of the San Luis Rey River which is about 600 meters (2,000 feet) downstream from the bridge. The existing bridge is approximately 7 meters long by 9 meters wide. The proposed action is to replace the existing bridge with a slightly wider bridge (triple box culvert about 9 meters long by 13 meters wide) to improve safety. As part of the proposed action, SR-76 would also be re-paved about 30 meters on each side of the new bridge.

The proposed project would result in 0.04 acre of direct impacts to Waters of the United States (Waters), including unvegetated waters, emergent wetland vegetation, and non-native plants. Because the replacement bridge will be slightly larger than the existing bridge, 0.01 acre of Waters will be permanently impacted. Furthermore, two coast live oaks (*Quercus agrifolia*) adjacent to the bridge will be removed to facilitate construction activities.

Conservation Measures

The proposed project contains the following measures which will be implemented as part of the proposed action to minimize potential impacts to the arroyo toad:

- Temporary silt fencing will be installed at the perimeter ends of the work area. The purpose of the fence is to reduce the potential for siltation downstream, and to exclude any dispersing toads from entering the work area during construction. The fence will consist of fabric or plastic at least 24 inches high, staked firmly to the ground with the lower 12 inches of material stretching outward along the ground. This is to prevent toads from burrowing down and under the temporary fence. The fence will extend across West Rincon Creek into the uplands.
- All machinery and personnel will be restricted to the work area.
- Work will be completed outside of the rainy season and will not take place when it may cause degradation of water quality downstream.
- Fueling and repairs of equipment will take place outside of the drainage to avoid potential contamination of the waterway.

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STATUS OF THE SPECIES

Listing Status and Description

The Service listed the arroyo toad as endangered on December 16, 1994 (59 FR 63264) and a recovery plan was published in July 1999 (U.S. Fish and Wildlife Service 1999). At the time of listing, the arroyo toad was described as the arroyo southwestern toad (*Bufo microscaphus californicus*). Gergus (1998) recently published genetic justification for the reclassification of the arroyo southwestern toad as a full species (i.e., arroyo toad [*Bufo californicus*]). Critical habitat was proposed for the arroyo toad on June 8, 2000 (65 FR 36512). A detailed account of the status, distribution, and ecology of the arroyo toad is presented in the recovery plan, which is hereby incorporated by reference.

The current distribution of the arroyo toad in the United States is from the Salinas River Basin in Monterey County, south to the Tijuana River and Cottonwood Creek Basin along the Mexican Border (U.S. Fish and Wildlife Service 1999). Arroyo toads are also known from a seemingly disjunct population in the Arroyo San Simeon River System, about 16 kilometers (10 miles) southeast of San Quintin, Baja California (Gergus *et al.* 1997). Arroyo toads use low gradient stream reaches with sand or gravel substrates. During the breeding season, arroyo toads require streams that have shallow pools with fine textured substrates (i.e., sand or gravel) in which to deposit their eggs. Outside of the breeding season arroyo toads are essentially terrestrial and are known to utilize a variety of upland habitats including, but not limited to, coastal sage scrub, chaparral, grassland, and oak woodland (Holland 1995, Griffin *et al.* 1999).

Life History

The arroyo toad is a small, light green or brown toad with warty skin. Arroyo toad larvae feed on loose organic material such as interstitial algae, bacteria, and diatoms. They do not forage on macroscopic vegetation (Sweet 1992, Jennings and Hayes 1994). Juvenile toads rely on ants almost exclusively (U.S. Fish and Wildlife Service 1999). By the time they reach 17 to 23 mm in length, they take more beetles, along with the ants (Sweet 1992, U.S. Fish and Wildlife Service 1999). Adult toads probably consume a wide variety of insects and arthropods including ants, beetles, spiders, larvae, caterpillars, and others. Breeding typically occurs from February to July on streams with persistent water (Griffin *et al.* 1999). Female arroyo toads must feed for a minimum of approximately two months to develop the fat reserves needed to produce a clutch of eggs (Sweet 1992). Eggs are deposited and larvae develop in shallow pools with minimal current and little or no emergent vegetation. The substrate in these pools is generally sand or fine gravel overlain with silt. Arroyo toad eggs hatch in 4 to 5 days and the larvae are essentially immobile for an additional 5 to 6 days (Sweet 1992). They then begin to disperse from the pool margin into the surrounding shallow water, where they spend an average of 10 weeks (Sweet 1992). After metamorphosis (June-July), the juvenile toads remain on the bordering gravel bars until the pool no longer persists (usually from eight to twelve weeks depending on site and yearly conditions) (Sweet 1992). Most individuals become sexually mature by the following spring

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(Sweet 1992). This species has been observed moving approximately 1.6 kilometers (1 mile) within a stream reach and 1 kilometer (0.6 mile) away from the stream, into native upland habitats (Holland 1995, Sweet 1992) or agricultural areas (Griffin *et al.* 1999). Movement distances may be regulated by topography and channel morphology.

Rangewide Trend and Current Threats

Arroyo toad population numbers and densities are not currently known because insufficient data is available on the species' normal population dynamics and on habitat characteristics that correlate with density. This species was historically found in at least 22 river basins in southern California from the upper Salinas River system in Monterey County to San Diego County and southward to the vicinity of San Quintin, Baja California, Mexico. They have been extirpated from an estimated 75 percent of their former range in the United States and they now occur primarily in small, isolated areas in the middle to upper reaches of streams. According to the recovery plan, the continued/increased viability of the San Luis Rey River population is essential to the survival and recovery of the arroyo toad (U.S. Fish and Wildlife Service 1999).

Because arroyo toad habitats (i.e., broad, flat floodplains in southern California) are favored sites for flood control projects, agriculture, urbanization, and recreational facilities such as campgrounds and off-highway vehicle parks, many arroyo toad populations were reduced in size or extirpated due to extensive habitat loss from 1920 to 1980 (U.S. Fish and Wildlife Service 1999). The loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, caused arroyo toads to disappear from a large portion of their previously occupied habitat in California (Jennings and Hayes 1994). Currently, the major threats to arroyo toad populations are from stream alteration, introduction of exotic species, urban and rural development, mining, recreation, grazing, drought, wildfire, and large flood events (U.S. Fish and Wildlife Service 1999).

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR §402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation, and the impacts of State and private actions which are contemporaneous with the consultation in progress.

An existing bridge (West Rincon Creek Bridge) currently spans West Rincon Creek, a first order tributary stream of the San Luis Rey River. Two coast live oaks are situated directly to the north of the existing bridge and there is a small area (less than 0.1 acre) of mule-fat (*Baccharis salicifolia*), to the northeast of the bridge. The downstream side of the bridge is dominated by castor bean (*Ricinus communis*), a common non-native, ruderal species. There is a narrow (less

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than 2 meters wide), but well-defined channel downstream with a sand substrate. The downstream end grades into a good quality coast live-oak riparian forest containing large-stature trees up to 40 feet tall that extends towards the San Luis Rey River. Various scattered coastal sage scrub species are present near the bridge (e.g., *Eriogonum fasciculatum* and *Opuntia* spp.).

The Service considers the action area of the proposed project to include the construction area within the silt fencing and material and equipment storage area(s). Arroyo toads were not observed within the action area during the 1999 surveys. The action area does not appear to provide suitable breeding habitat, but it may be utilized by dispersing arroyo toads for foraging or as burrowing habitat. During the 1999 surveys, a group of 6 arroyo toads was found approximately 2,400 feet to the west of the project site and 2 individual arroyo toads were located between 1,800 and 2,400 feet to the southwest of the project site, along a dirt road.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated and interdependent with that action, that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur.

The use of a box culvert to replace the existing bridge will allow stream morphology to remain intact. Because no breeding habitat occurs on site, and no materials will be deposited into the stream channel, the project is not likely to affect adult breeding behavior or juvenile survival. However, because arroyo toads are known to occur within 1 kilometer of the project site, dispersing or burrowing toads may be affected directly (i.e., injured or killed) or indirectly as result of project construction activities.

Construction of the proposed project will occur almost entirely within the existing SR-76 roadway in an area with an existing bridge. The construction activity will last approximately 3 weeks and will result in only 0.01 acre of permanent impacts to existing vegetation. Based on implementation of the conservation measures (i.e., silt fencing, staying within the project limits, working outside of the rainy season, and fueling and repairing equipment outside of the drainage) there should be minimal impacts to arroyo toads moving through the area.

There will be 0.04 acre of temporary and 0.01 acre of permanent impacts to critical habitat as a result of the proposed action. Primary constituent elements present at the project site include (1) upland habitat of sufficient width and quality (i.e., loose sandy soil that allows burrowing) to provide foraging and living areas for sub-adult and adult arroyo toads; and (2) stream channels and upland habitats where manmade barriers do not completely or substantially impede migration to overwintering sites, dispersal between populations, or recolonization of areas that contain suitable habitat.

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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 that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

A number of projects and land uses along the San Luis Rey River have degraded arroyo toad habitat in this drainage. Agriculture, roads, and urban development have degraded upland habitat, and sand mining, emergency road repairs, and introduction of invasive aquatic plants and predators have degraded aquatic breeding habitat. In addition, there is a long history of illegal fills and activities within the river. Some of these have resulted in enforcement actions by the U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA), but many unauthorized activities go unresolved. These types of activities all have the potential to impact the toad either directly through mortality or indirectly due to loss or degradation of habitat.

The loss of riparian vegetation and naturally forming floodplain terraces along the San Luis Rey River represents a cumulative, significant impact in the regional context. Unauthorized grading and filling of habitat will continue to affect the long-term viability of the arroyo toad in this watershed.

CONCLUSION

After reviewing the current status of the arroyo toad, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the replacement of the West Rincon Creek Bridge, as proposed, is not likely to jeopardize the continued existence of the arroyo toad, and is not likely to destroy or adversely modify proposed critical habitat. We present this conclusion based on the following reasons:

- The number of arroyo toads that may be harmed or harassed as a result of the project is anticipated to be minimal because the impact area is small and does not provide suitable breeding habitat.
- The impacts to potential burrowing and foraging habitat are temporary and short-term.
- The area to be directly disturbed as a result of the proposed action is a small percentage of the suitable habitat present in San Diego County for the arroyo toad.
- The direct and indirect impacts of this proposed action to the river system have been minimized through project conservation measures.

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INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Under the terms of section 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by the FHWA so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The FHWA has a continuing duty to regulate the activity that is covered by this incidental take statement. If the FHWA (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the FHWA or the applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. [50 CFR §402.14(1)(3)]

AMOUNT OR EXTENT OF TAKE

The Service anticipates incidental take of arroyo toads will be difficult to detect for the following reasons:

- The exact distribution and population size is difficult to estimate due to the dynamic conditions associated with their habitat. Suitable habitat may change during a given year or from year to year depending on climatic conditions, fires, or other natural or human-related events (U.S. Fish and Wildlife Service 1999). Additionally, climatic conditions and habitat suitability will influence female reproductive success and juvenile survival.
- Except during the early juvenile stage (first 4-5 weeks), arroyo toads forage at night and burrow during the day. Nocturnal activity is usually associated with rainfall and moderate temperatures and some nights of very high relative humidity (U.S. Fish and Wildlife Service 1999). The arroyo toad may be found in upland habitat up to 1 kilometer (0.62 mile) from a known breeding area. Therefore, detection of arroyo toads

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outside of the breeding season is very difficult, with limited opportunities for anticipating when the species may be active.

- Finding dead or injured arroyo toads within the construction area is unlikely as the animal would be underground during the construction activities.

However, the Service anticipates approximately 0.04 acre, and all arroyo toads within this area, would be taken as a result of this proposed action. The incidental take is expected to be in the form of direct mortality or harassment.

EFFECT OF THE TAKE

- In the accompanying biological/conference opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of proposed critical habitat.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take of arroyo toads:

1. Take of arroyo toads, due to the straying of construction and support equipment or equipment maintenance activities, will be reduced through education of employees and establishment of delineated project boundaries that are clearly marked.
2. Take of arroyo toads, in the vicinity of the project site, will be avoided by implementation of best management practices to minimize direct and indirect impacts.
3. Take of arroyo toads will be reduced through minimizing the removal of native vegetation and through minimizing or eliminating the presence of non-native species.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the FHWA must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1. The following terms and conditions implement reasonable and prudent measure 1:
 - 1.1 Employees shall strictly limit their activities, vehicles, equipment, and construction materials to the proposed project area, staging areas, and routes of travel.

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- 1.2 To avoid attracting predators of the arroyo toad, the project site shall be kept as clean of debris as possible. All food related trash items shall be enclosed in sealed containers and regularly removed from the site.
 - 1.3 Pets of project personnel shall not be allowed on the project site.
 - 1.4 Project-related vehicle travel and construction activities shall be limited to daylight hours as arroyo toads use roadways primarily at night.
 - 1.5 The upstream and downstream limits of project disturbance plus lateral limits of disturbance on either side of the stream shall be clearly defined and marked in the field and reviewed by the biologist prior to initiation of work.
 - 1.6 A qualified biologist shall conduct a training session for all project personnel prior to proposed activities. At a minimum, the training shall include a description of the arroyo toad and its habitats, the general provisions of the Act, the need to adhere to the provisions of the Act, the penalties associated with violating the provisions of the Act, the general measures that are being implemented to conserve the listed species as they relate to the project, and construction site boundaries.
 - 1.7 The project biologist shall visit the work site periodically throughout the duration of the project to ensure that all terms and conditions are being implemented. The project biologist shall be empowered to halt work activity if necessary and to confer with staff from the Service to ensure the proper implementation of species and habitat protection measures.
 - 1.8 No equipment maintenance such as adding of fuel, oil, coolant, or any other such activities shall be allowed on the project site.
2. The following terms and conditions implement reasonable and prudent measure 2:
- 2.1 The construction area shall be the minimal area necessary to complete the project.
 - 2.2 A temporary silt fence shall be installed directly downstream from the limits of project construction activities. The fence shall be at least 24 inches high after installation. The bottom of the fence shall be stretched downstream, flush with the ground for a minimum of 12 inches and held down with sandbags or other inert imported materials. All fencing materials (i.e., mesh, stakes, sandbags, etc.) shall be removed following construction. On-site soil shall not be used to hold the bottom of the fence down and no digging shall be undertaken to install the silt fence. Furthermore, no vegetation shall be removed or cleared to facilitate installation of the fence.

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- 2.3 Following installation of the fence, surveys shall be conducted within the project area for arroyo toads prior to construction. Any toads found within the construction site shall be relocated, by the project biologist, to the closest area of suitable habitat along the San Luis Rey River.
- 2.4 Erodible fill material should not be deposited into water courses. Brush, loose soils, or other similar debris material should not be stockpiled within the stream channel or on its banks.
3. The following terms and conditions implement reasonable and prudent measure 3:
 - 3.1 The work site shall be returned to pre-existing contours and revegetated with appropriate native species.
 - 3.2 A maintenance and monitoring schedule shall be established to remove non-native species and to document the success of the revegetation effort.
 - 3.3 A report summarizing how the project is in compliance with the reasonable and prudent measures and the terms and conditions of this biological opinion shall be submitted to the Service annually for a minimum of five years, to demonstrate that the project site has been successfully revegetated and maintained.

The Service's Carlsbad Office is to be notified within three working days should any endangered or threatened species be found dead or injured during this project. Notification must include the date, time, and location of the carcass, and any other pertinent information. Dead animals may be marked in an appropriate manner, photographed, and left on-site. Injured animals should be transported to a qualified veterinarian. Should any treated animals survive, the Service should be contacted regarding the final disposition of the animals. The Service contact person is Jesse D'Elia and may be contacted at the letterhead address or at (760) 431-9440.

The Service retains the right to access and inspect the project site for compliance with the proposed project description and with the terms and conditions of this biological opinion. Any habitat destroyed that is not in the identified project footprint should be disclosed immediately to the Service for possible reinitiation of consultation. Compensation for such habitat loss will be requested at a minimum ratio of 3:1.

The Service believes that all arroyo toads within the silt fencing will be taken as a result of project implementation. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. The Federal agency must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

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CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans or to develop information. The recommendations provided here relate only to the proposed action and do not necessarily represent complete fulfillment of the agency's 7(a)(1) responsibility for these species.

The Service provides the following general recommendations for future FWHA projects:

1. Projects should be designed to avoid the placement of equipment and personnel within the stream channel or on sand and gravel bars. Projects should also avoid adjacent upland habitats to the maximum extent practicable.
2. Projects that cannot be conducted without placing equipment or personnel in sensitive habitats should be timed to avoid the breeding season of the arroyo toad (generally March through August) when eggs and tadpoles are present. To minimize further effects to breeding populations and to reduce sedimentation and erosion, such projects should be timed so that work within or near the stream channel is conducted during the dry season when flows are at their lowest or are nonexistent.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION NOTICE

This concludes formal consultation and conference on the action outlined in your May 5, 2000, request for initiation. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

You may ask the Service to confirm the conference opinion as a biological opinion issued through formal consultation if the critical habitat is designated. The request must be in writing. If the Service reviews the proposed action and finds that there have been no significant changes

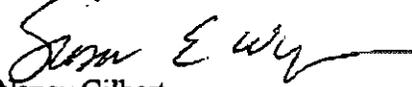
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in the action as planned or in the information used during the conference, the Service will confirm the conference opinion as the biological opinion on the project and no further section 7 consultation will be necessary.

After designation of critical habitat for the arroyo toad and any subsequent adoption of this conference opinion, the Federal agency shall request reinitiation of consultation as described in (1)-(4), above. If you have any questions or concerns about this biological opinion, please contact Jesse D'Elia of my staff at (760) 431-9440.

Sincerely,

for 
Nancy Gilbert
Assistant Field Supervisor

cc: California Department of Transportation (Attn: Chris White)
U.S. Army Corps of Engineers (Attn: Terry Dean)

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LITERATURE CITED

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