



United States Department of the Interior

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July 18, 2007

Cons. # 22420-2007-F-0021

Memorandum

To: Area Manager, Albuquerque Area Office, U.S. Bureau of Reclamation,
Albuquerque, New Mexico

From: Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services
Field Office, Albuquerque, New Mexico

Subject: U.S. Fish and Wildlife Service's Biological Opinion on the Effects of Actions
Associated with the Biological Assessment for the Perennial Rio Grande Silvery
Minnow Refugia at Drain Outfalls Project

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion on the effects of the proposed Perennial Rio Grande Silvery Minnow Refugia at Drain Outfalls Project (Perennial Outfalls Project). The Perennial Outfalls Project is located in the Isleta Reach of the Middle Rio Grande (MRG) at Los Chavez Wasteway, the Peralta Wasteway, and the Lower Peralta Drain #1 (Fig. 1). This biological opinion concerns the effects of the proposed action on the endangered Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow) and its designated critical habitat, the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) and its designated critical habitat, and the threatened bald eagle (*Haliaeetus leucocephalus*) (bald eagle). Your request for formal consultation, in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 531 *et seq.*) was received on October 4, 2006.

This biological opinion is based on determinations made in your cover letter for the Biological Assessment for the Perennial Refugia Habitat Project, information submitted in the June 2007 Perennial Rio Grande Silvery Minnow Refugia at Drain Outfalls Biological Assessment (Biological Assessment), and other sources of information available to the Service. A complete administrative record of this consultation is on file at the Service's New Mexico Ecological Services Field Office (NMESFO).

This biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v.*

USDI Fish and Wildlife Service (CIV No. 03-35279) to complete the following analysis with respect to designated critical habitat. This consultation analyzes the effects of the action and its relationship to the function and conservation role of silvery minnow and flycatcher designated critical habitat to determine whether the current proposal destroys or adversely modifies designated critical habitat.

You have determined that the proposed project “may affect, but is not likely to adversely affect,” the flycatcher, its designated critical habitat, and the bald eagle. We concur with these determinations for the following reasons:

Southwestern Willow Flycatcher

Indirect effects to flycatcher may occur from removal of small amounts of cottonwoods, Russian olive and saltcedar. While flycatcher has been documented to use saltcedar for nesting, flycatcher surveys conducted in the Belen Reach indicate that suitable flycatcher habitat is limited (Moore and Ahlers, 2006a, 2006b). 2006 flycatcher surveys documented a total of 27 migrants passing through the Belen Reach (Moore and Ahlers, 2006a, 2006b). In the 3 flycatcher survey units located in and near the proposed project area, 2 males were documented on June 5th in BL-16; 1 male on June 3 on BL 17 and 1 male on May 24th in BL18. The Belen Reach receives very little overbank flooding. The majority of habitat in this reach consists of sparse, decadent saltcedar and Russian olive. Cottonwoods and grassy meadows are also interspersed throughout this reach. There are occasional stands of native willows adjacent to the river. An unpaired male was detected in a willow stand 14 miles downstream of the proposed project area (Moore and Ahlers, 2006a). There are no willow stands near the project area. Moore and Ahlers (2006b) conclude that small patches of habitat in the Belen Reach continue to improve in quality especially in restoration project areas, or where natural recruitment of native willows has occurred. This reach has the potential for colonization by flycatchers in the near future given the available habitat and the presence of source populations on the Pueblo of Isleta and in the Sevilleta/La Joya Reach.

The flycatcher is a migrant through this portion of the Rio Grande and may be present between April and June, and again in August. Suitable nesting habitat does not currently exist within the project area. Noise from construction activities could affect individual birds moving in the area; however, construction will not occur during the flycatcher breeding season to avoid noise impacts during the nesting season.

Clearing of dense woody vegetation will be avoided. Construction will occur only between August 15 and April 15. Large cottonwoods removed for use in the drain outfalls will be replaced by planting new cottonwoods in the areas where they were removed.

Bald Eagle

The bald eagle commonly winters along the Rio Grande in New Mexico, however, there are only a few known bald eagle breeding sites in New Mexico, none of which are in the project area or would be affected by the proposed project. Preferred bald eagle roost sites are in snags and cliffs along the river.

The Proposed Action will remove from six to seven cottonwood snags from each site to be placed in the drain outfall area. Relocation of such snags or trees could potentially change suitable bald eagle habitat for potential minnow habitat, by removing standing trees/snags to snags lying in the drain outfall area. Short term construction related impacts may include temporary noise and other disturbance. Guidelines will be employed to minimize the potential for disturbing bald eagles. No long-term effects on bald eagle populations or habitat are expected to result from the Proposed Action. Large, mature cottonwood trees and snags are abundant in this area and are not limiting. Measures will be taken to minimize disturbance to riparian habitat. Any large cottonwood trees removed for the project will be replaced by planting new cottonwood trees where they were removed. Although noise and human activities during the construction may disturb bald eagles using the nearby roosts, Reclamation included a conservation measure in their biological assessment to minimize the effects to bald eagles as follows:

“If a bald eagle is visible at the project area in the morning before construction activities start or following breaks in construction activities, Reclamation will be required to suspend all activity until the bird leaves of its own volition. If a bald eagle arrives during construction activities, construction will not be interrupted. If bald eagles are found consistently in the immediate project area during the construction period, Reclamation will contact the Service to determine whether formal consultation is necessary.”

With this conservation measure in place, effects to the bald eagle from the proposed action are insignificant and discountable. The remainder of this biological opinion will deal with the effects of implementation of the proposed action on the silvery minnow and its designated critical habitat.

Consultation History

This biological opinion is based on information provided in the October 2006 Biological Assessment, a resubmitted June 2007 Biological Assessment, meetings with Reclamation and the principal investigators of this and other related projects, e-mail and telephone conversations between our staffs; data in our files; literature review; and other sources of information.

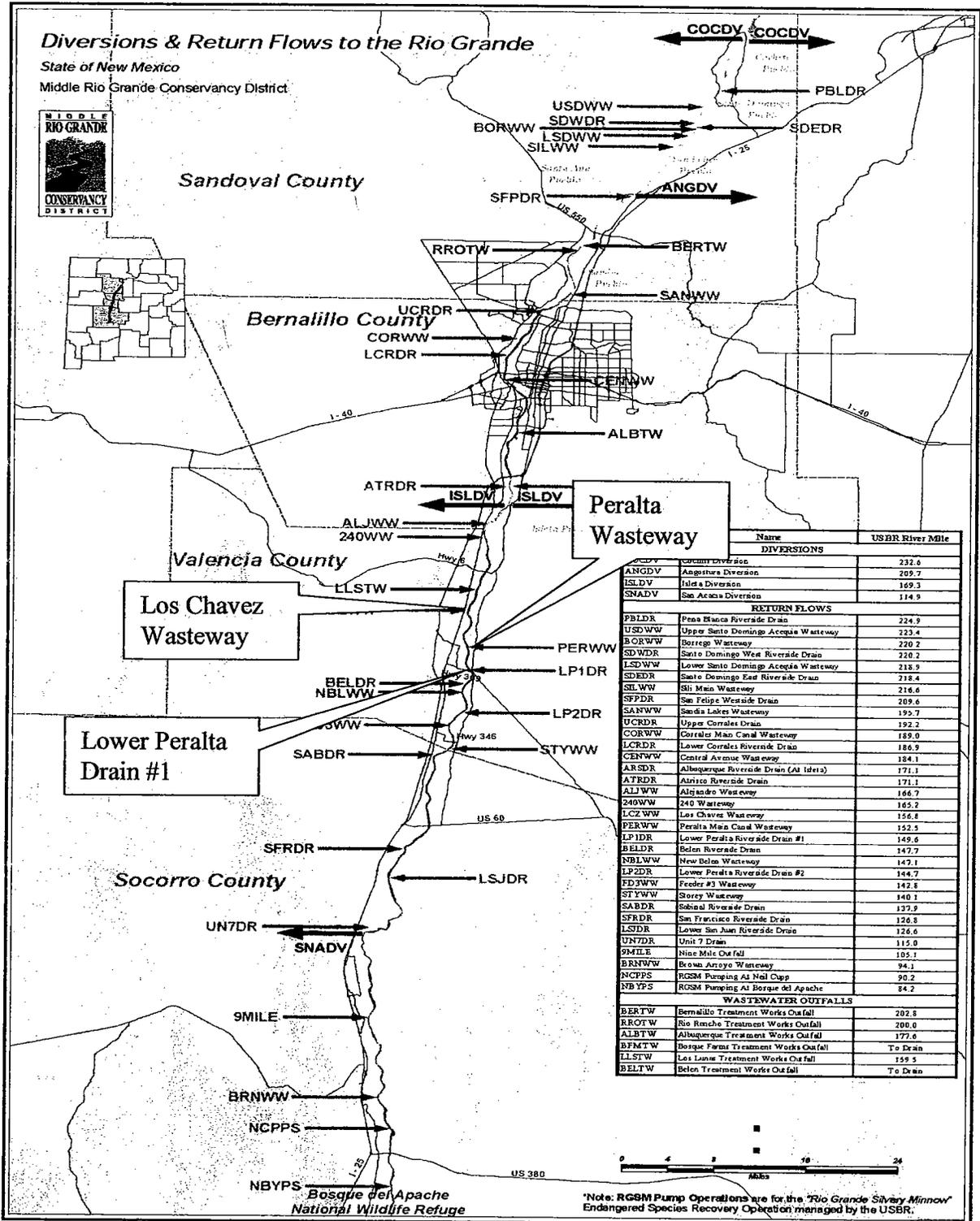


Figure 1. Project Area Map. Three drain outfalls proposed for habitat enhancement are highlighted in yellow.

BIOLOGICAL OPINION

DESCRIPTION OF PROPOSED ACTION

The Biological Assessment contains the comprehensive description of the purpose and need for the proposed action and the project area, details on construction of the project, an adaptive management process, a description of environmental commitments, and effects determination for listed species and critical habitat. The following description of the proposed action is a summary of the material in the biological assessment and should not be considered as the complete description.

Purpose and Objective

The Middle Rio Grande Conservancy District (MRGCD) along with its project partners HabiTech in Laramie, Wyoming; New Mexico State University in Las Cruces, New Mexico; and the Bureau of Reclamation Denver Technical Service Center, will create habitat structures for silvery minnow using large woody debris in three drain outfalls in the upper Isleta Reach of the MRG at Los Chavez Wasteway, the Peralta Wasteway, and the Lower Peralta Drain #1 (Fig. 1) to increase perennially wetted pool habitat. The MRGCD has changed the operation of the drain outfalls/wasteways to improve flows to these three outfalls without impacting water deliveries.

Project Description

The project consists of anchoring large cottonwood snags in the MRG channel at the outfall of three drains as they enter the river channel. The cottonwood snags will be placed either in the adjacent bank or in the channel to create scour pools. Figure 2 is a conceptual engineering drawing illustrating how cottonwoods snags will be anchored in the bank. Placement of these habitat structures in the drain outfalls takes advantage of persistent drain flows to potentially provide refugia at critical times, while not impairing the function of the drains. It also assures fish access to the river channel when flow conditions allow. At times of high flow in the MRG, the snags will facilitate the scour of main channel pools. The MRG Project irrigation system will be operated by MRGCD in a manner to ensure adequate flows are present at critical times in selected drain outfalls as long as water is available. The presence of large woody debris is intended to create slack and slow water habitats, thus potentially improving the habitat in this reach.

Approximately 0.5 to 1.0 acres of pool habitat will be created at each of the three selected sites. Approximately 1.0 acre of wetted designated critical habitat will be disturbed at each site, for a total of 3 acres, during construction (M. Porter, *pers. comm.*).

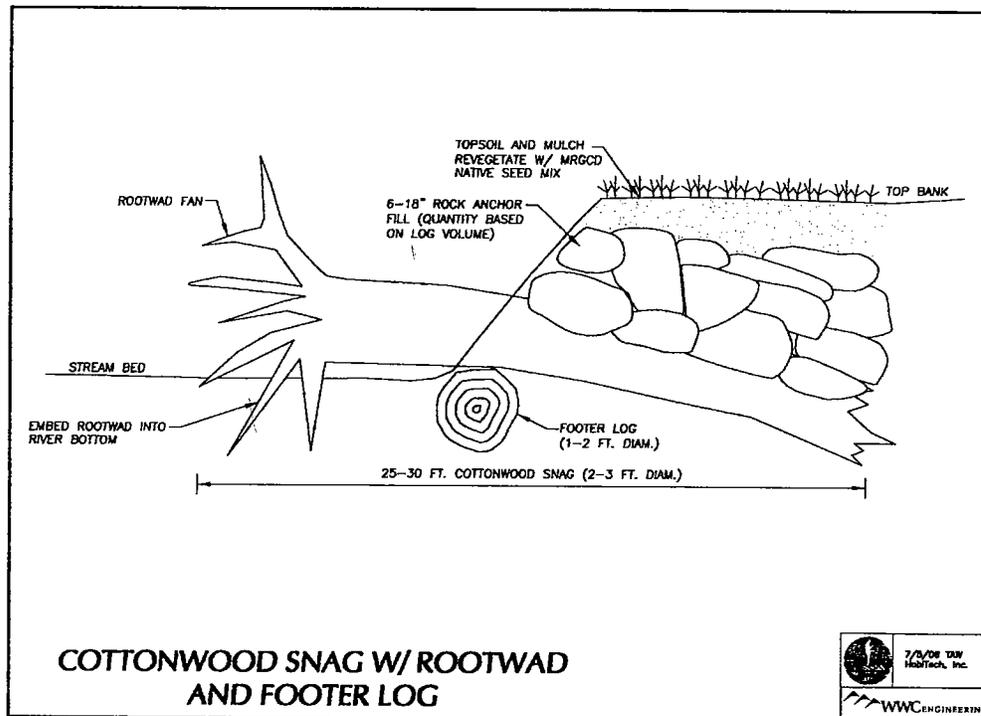


Figure 2. Conceptual engineering drawing showing how a large cottonwood snag will be anchored on the river bank.

Project Locations and Treatments

The project is located at the outfalls of the following: (1) Los Chavez Wasteway; (2) Peralta Wasteway; and (3) the Lower Peralta Drain #1 (Fig. 1). These drains are located upstream of the Highway 309 bridge near Belen, New Mexico.

Los Chavez Wasteway

An aerial view of the Los Chavez Wasteway (Fig. 3) shows the relationship of the drain outfall to the main river channel, the general access point and the staging area. A close up photo of the staging area for the Los Chavez Wasteway outfall is shown in Figure 5. The staging area is approximately 100 ft. long and 50 ft. wide and is slightly downstream from the mouth of the outfall. A portion of the staging areas is to the left of the photo. The staging area consists of a high bank with sparse vegetation. Access to the Los Chavez Wasteway is via an existing road (Figure 6). Recreational and river management activities have kept the road clear of brush and debris and no vegetation removal will be required.

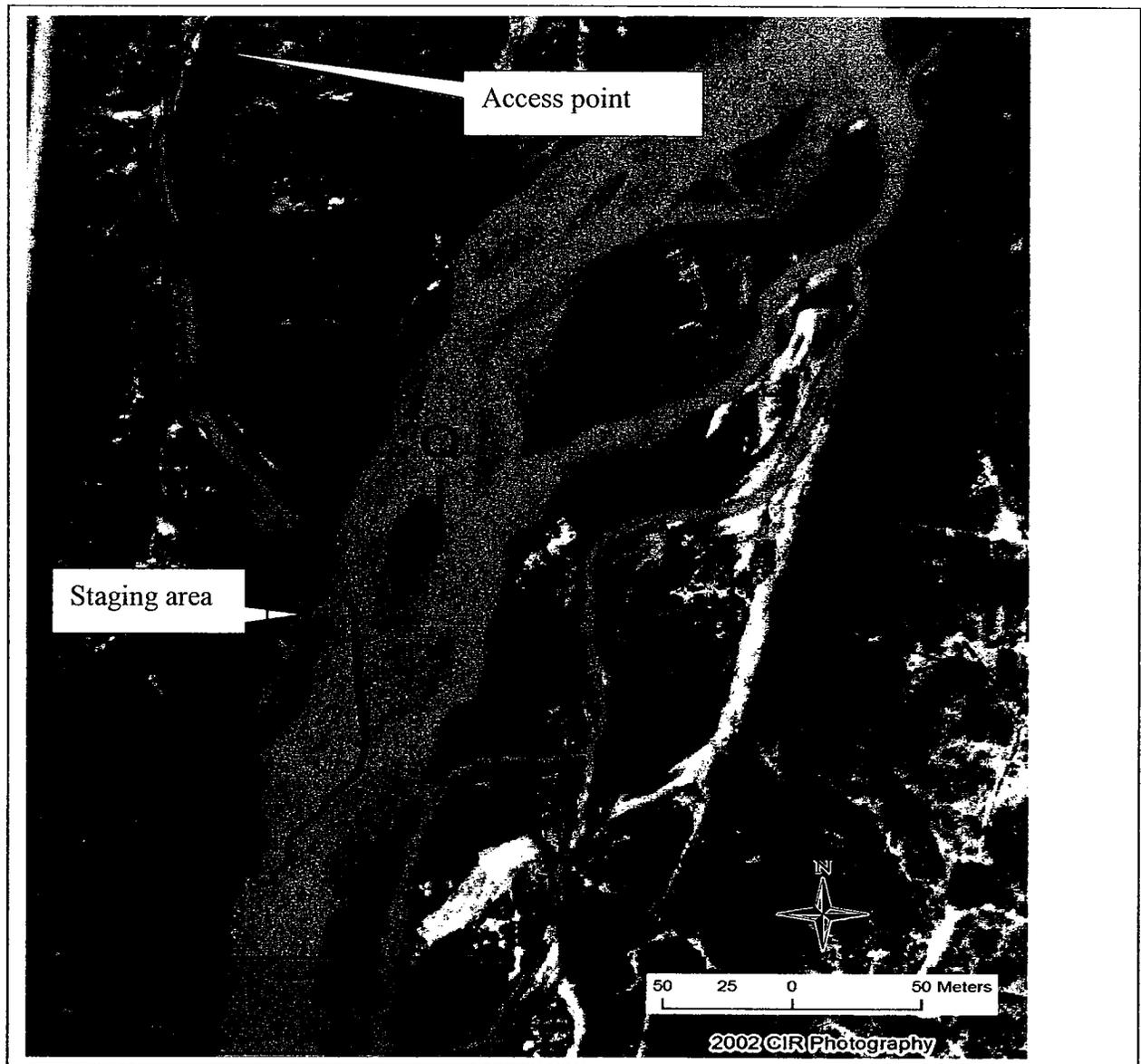


Figure 3. Aerial view of the Los Chavez Wasteway outfall showing the access point, staging area and outfall area where the habitat enhancement will occur.

A site plan is shown in Figure 4 showing the location and approximate configuration of the cottonwood snags to be placed in the mouth of the Los Chavez drain outfall.

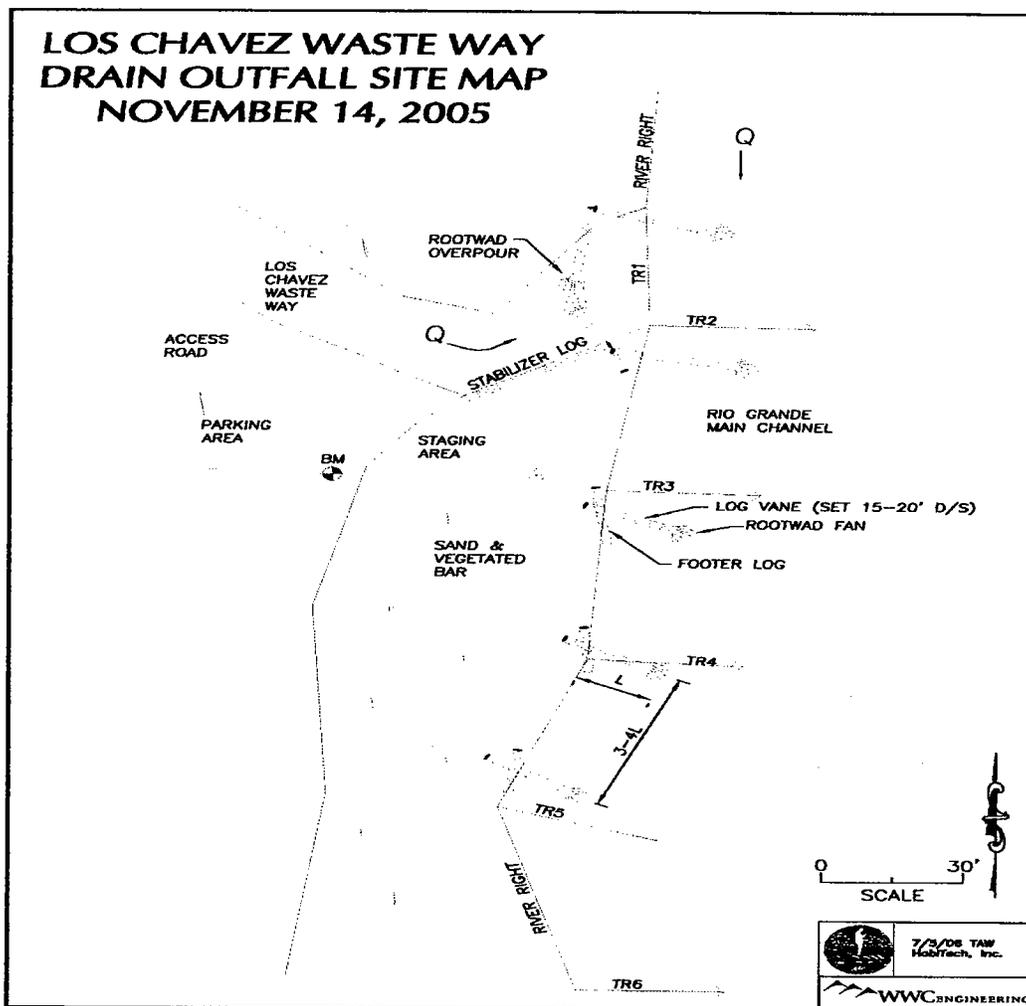


Figure 4. Site plan showing the location and approximate configuration of the cottonwood snags to be placed in the mouth of the Los Chavez Wasteway outfall.

Seven large cottonwood snags will be anchored in the mouth of the drain outfall and slightly downstream of the outfall (Figure 4), creating one large and three smaller large woody debris structures. The large standing dead cottonwood snags will be obtained within 50 to 100 feet of the roadway in the vicinity of the staging area. A small amount of Russian olive and saltcedar will be disturbed (< 1/8 acre) to obtain the snags. Cottonwoods will only be removed from areas where there is little / no dense vegetative understory (see Figures 9 and 10). Priority will be given to using already downed cottonwood snags from the MRGCD or Bureau of Reclamation (BOR) maintenance activities if available within an economically practical distance.

An excavator will be used to dig out the root wad and tip over the standing snag. The snag will either be dragged or lifted and carried to the site using a front end loader. No vegetation will be disturbed as existing roadways and cleared areas will be used.

The large cottonwood snags will be installed either in the bank or in the channel. For bank installation, a trench will be dug out and the log/rootwad set in, backfilled with rock and soil, and revegetated as illustrated in Figure 2. In-channel placements will require anchoring similar to the method originally described for the cottonwood snags placed in the Albuquerque Reach described in Wesche et al. (2004) using concrete blocks in the channel to anchor the snags. The concrete blocks will only be used at the Los Chavez site if necessary to minimize vegetative disturbance (S. Broderick, *pers. comm.*).

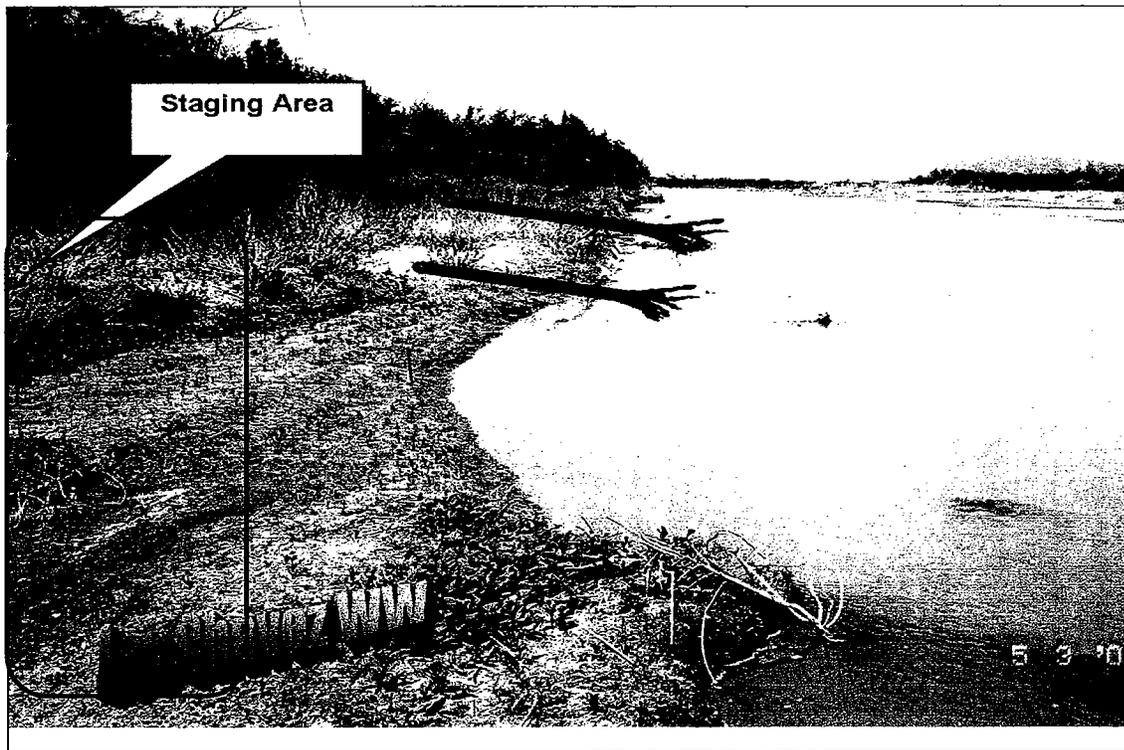


Figure 5. Close up of the staging area for the Los Chavez Wasteway outfall.

A portion of the jetty jacks in the immediate vicinity of the bank where the cottonwood logs will be anchored will be removed to allow installation of the logs. Any required removal of the jetty jacks will be coordinated with the Corps of Engineers.

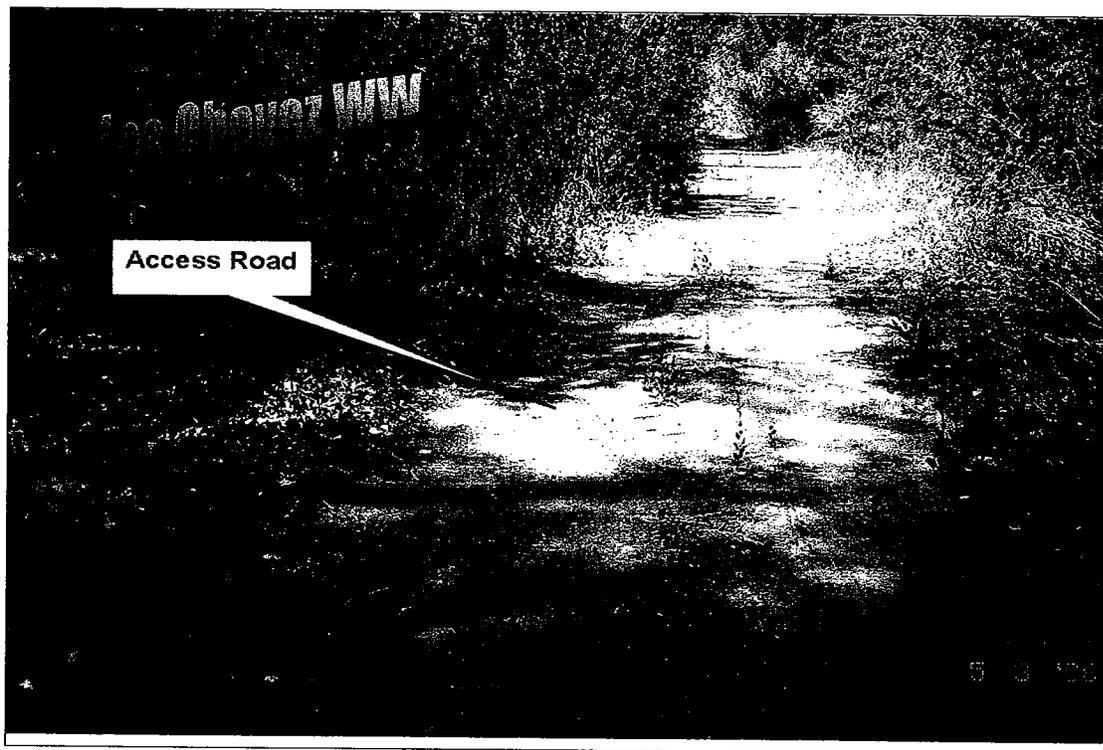


Figure 6. Access road at the Los Chavez Wasteway outfall. Recreational and river management activities have kept the road clear of vegetation and no additional clearing will be needed.

Peralta Wasteway

An aerial photo of the Peralta Wasteway shows the relationship of the wasteway to the main river channel, as well as the access point and the staging area (Fig. 7). A site plan for the Peralta Wasteway is shown in Figure 8 with the location and approximate configuration of the log structures.

The Peralta Wasteway is accessible by a well developed dirt road used primarily for recreation use and water management activities (Fig. 9). A small staging area will be sited at the drain in already-existing cleared area near the drain outfall (Fig 10). The staging area will be approximately 100 feet long by 50 feet wide. Seven cottonwood snags will be obtained from the cleared area adjacent to the access road (on the right side of the road in Fig. 9) if no previously-downed snags are readily available. The same procedure described for Los Chavez for removing the standing snags to the drain outfall will be used for the Peralta Wasteway site. No vegetation will be disturbed as existing roadways and cleared areas will be used. The areas where the snags will be obtained adjacent to the drains have been mechanically cleared of non-native vegetation.

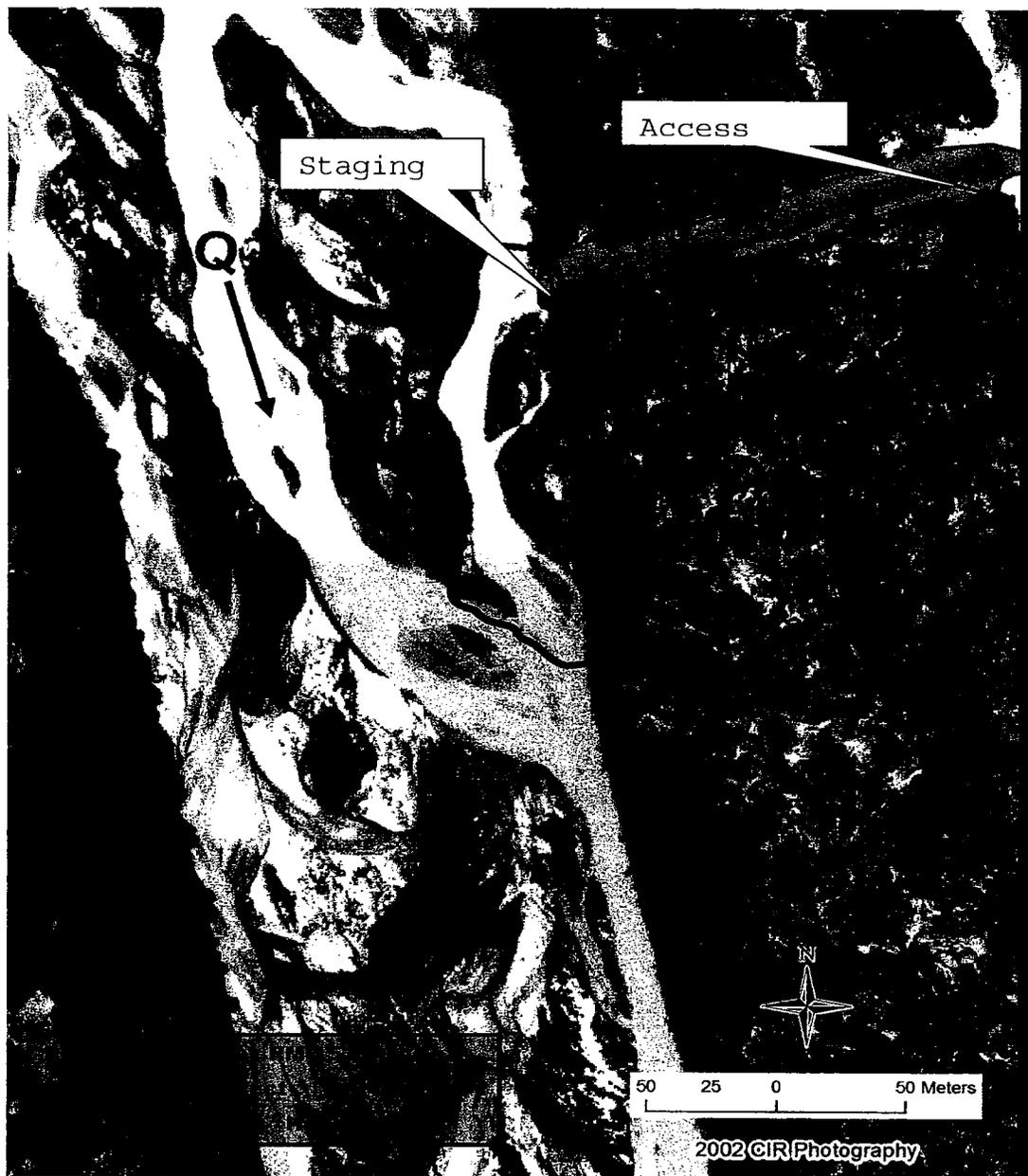


Figure 7. Aerial view of the Peralta Wasteway showing the relationship of the drain to the main river channel as well as the access point and staging area.

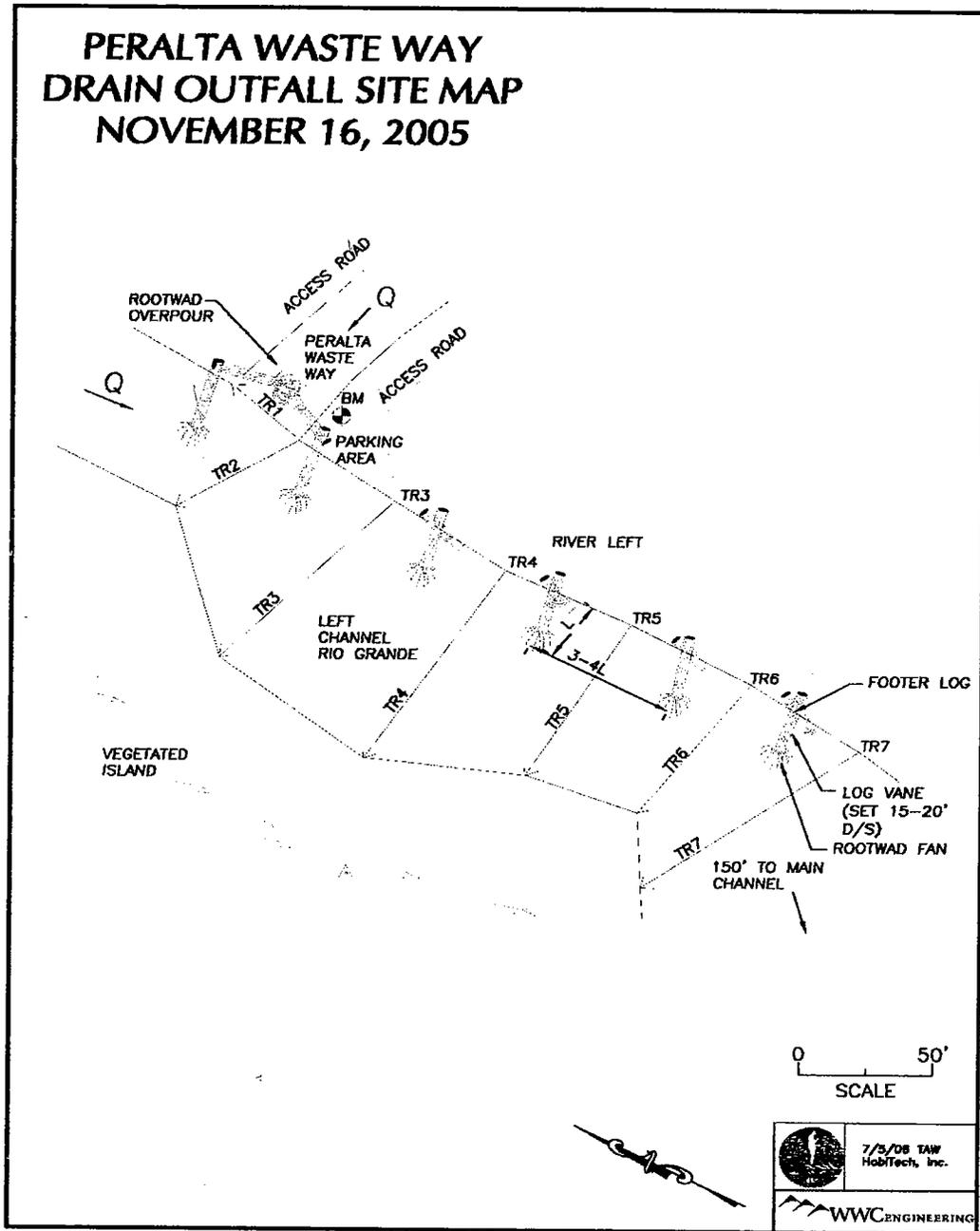


Figure 8. Site Plan for Peralta Wasteway outfall (facing from the drain out to the main river channel), showing the placement of large cottonwood snags.

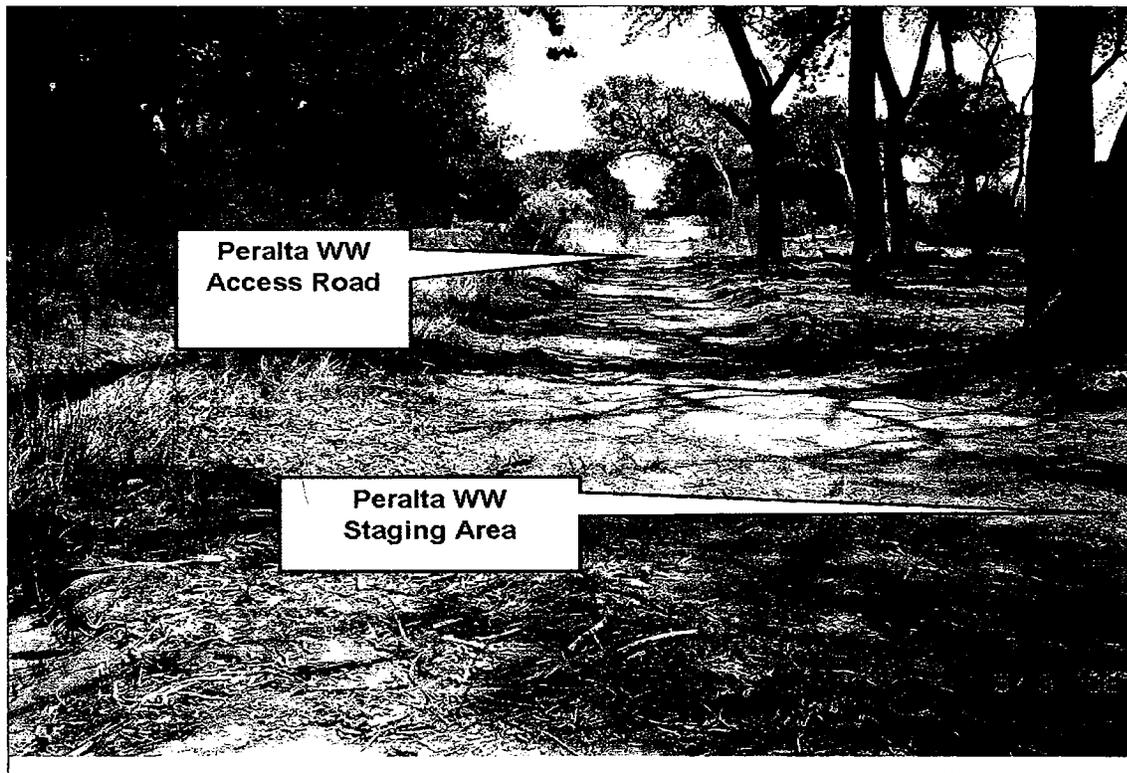


Figure 9. Peralta Wasteway, left of the road, showing the access point as well as the staging area (will be located on the well-used roadway area).



Figure 10. Peralta Wasteway showing the heavily impacted road area proposed for the staging area. A portion of the staging area is in the foreground out of the photo. Approximately dimensions are 100 ft. long by 50 ft. wide.

Lower Peralta Drain #1

The relationship of the outfall to the main river channel, as well as the location of the access road and staging area is shown in an aerial view of the Lower Peralta Drain #1 (Fig. 11). Figure 12 is the site plan for Lower Peralta Drain #1 showing the location and approximate configuration of the snags. Six large cottonwood snags will be used to create one large and three smaller habitat structures. As with logs for the other two sites, priority will be given to using already downed snags from MRGCD or BOR maintenance activities if available within an economically practical distance. If necessary, the snags will be obtained from the area adjacent to the access road.

The Lower Peralta Drain #1 is accessible by a well developed dirt road used primarily for recreation use and water management activities. A small staging area will be sited near the drain in already-existing cleared areas.



Figure 11. Aerial photo of Lower Peralta #1 showing the access and staging areas and drain outfall area.

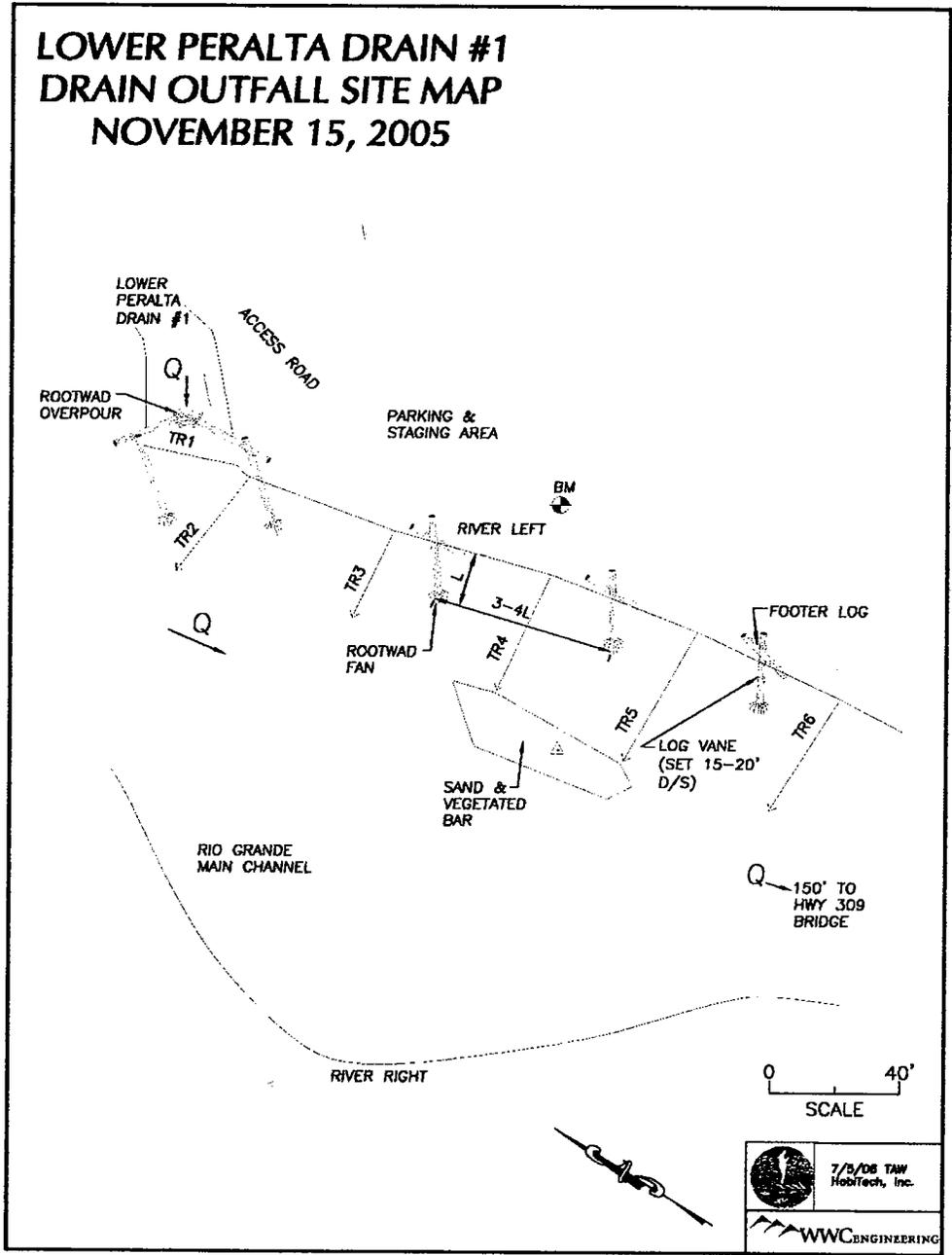


Figure 12. Site Plan for Lower Peralta #1.

Evaluation of Perennial Wetted Instream Habitat Use by Silvery minnow

Pre-installation physical and biological surveys and post-installation monitoring shall occur in association with this project. Furthermore, there are additional studies that are not part of this project designed to evaluate the efficacy of this type of structure as habitat for silvery minnow. This biological opinion does not address the studies outside of this project but recognizes that they may provide additional monitoring information for this project. The Biological Assessment summarized the monitoring that will occur with this project:

Physical evaluations will be conducted at each of the three sites by:

- 1) establishing a permanent benchmark as a consistent point of reference,
- 2) developing detailed 3-dimensional maps by engineering surveys,
- 3) measuring associated habitat characteristics within the enhanced area, including mean water depths, maximum water depths, residual depths, water velocities, substrate composition, and volume of accumulated woody debris, among others,
- 4) utilizing permanent photo points to document structure condition and stability, and
- 5) periodic observations of the enhancement areas during periods of low or zero river flow.

Biological monitoring will include sampling of fish relative abundance (non-lethal sampling only with electrofishing), macroinvertebrates and periphyton using Hester-Dendy plate samplers both in the immediate vicinity of each enhancement site and at permanent control sites located nearby, but at a suitable distance to avoid construction-related influence. Also, water quality parameters such as DO, pH, salinity, conductivity and water temperature will be routinely monitored. Appropriate statistical techniques will be applied for spatial and temporal comparisons to document physical and biological responses to the habitat structures.

Adaptive Management

Key uncertainties exist in establishing large woody debris in a greatly altered desert river system. Several important conditions exist now that were did not historically: river flows have been greatly altered and reduced, water quality has deteriorated causing sub-lethal effects to aquatic biota, and non-native predatory fish are now present in large numbers that were not present in the undisturbed river. Monitoring of the large woody debris structures in selected drain outfalls, either as part of this project or through other monitoring efforts, will provide data to address these key uncertainties through adaptive management. This monitoring feeds into the adaptive management process. Habitat structures can be fine tuned to provide suitable habitat conditions, problems can be identified quickly and rectified, and key uncertainties concerning silvery minnow use of large woody debris structures and survival in those structures can be addressed.

Environmental Commitments

- 1) Impacts to terrestrial habitats will be minimized by using existing roads and cleared staging areas. Wetlands and dense native vegetation will be avoided during construction. In general, equipment operation will take place in the most open area available and will minimize damage to native vegetation.
- 2) Silvery minnow critical habitat encompasses the entire project area (FR 2003) in the river channel. Best Management Practices will be enforced to minimize potential impacts to silvery minnow from direct construction impacts and erosional inputs into the river during work periods. A silt fence will be installed around the perimeter of areas to be excavated below the existing water line to exclude silvery minnow from the work area. Trenches constructed for snag placement will be seined immediately prior to placement of the snag in the trench to remove any silvery minnow that may enter the trench during the brief (approximately 1 hour) period of time the trench will be opened to the channel. Consultation with the USFWS will determine other effective Best Management Practices.
- 3) Clean Water Act (CWA) compliance is required of all aspects of the Project, and since most work associated with the Proposed Action will be completed within aquatic areas regulated by this law, a 404 permit is required. A state water quality certification permit under Section 401 of the CWA may also be required. The 404 and 401 permitting processes will be completed prior to commencement of the Proposed Action.
- 4) Storm water discharges under the Proposed Action will be limited to ground-disturbing activities outside the mean high water mark. All such activities will be evaluated for compliance with National Pollutant Discharge Elimination System (NPDES) guidance, an NPDES permit, or a Storm Water Pollution Prevention Plan.
- 5) All necessary permits for access points, staging areas, and study sites will be acquired prior to construction activity.

Action Area

The action area is defined as the entire width of the 100-year floodplain within the Isleta Reach from the Los Chavez Wasteway to San Acacia Diversion Dam.

STATUS OF THE SPECIES

RIO GRANDE SILVERY MINNOW

Description

The silvery minnow currently occupies a 170-mile reach of the Middle Rio Grande, New Mexico, from Cochiti Dam, Sandoval County, to the headwaters of Elephant Butte Reservoir, Socorro County (U.S. Fish and Wildlife Service 1994). The silvery minnow is a stout minnow,

with moderately small eyes, a small, sub-terminal mouth, and a pointed snout that projects beyond the upper lip (Sublette *et al.* 1990). The back and upper sides of the silvery minnow are silvery to olive, the broad mid-dorsal stripe is greenish, and the lower sides and abdomen are silver. Maximum length attained is about 3.5 inches (in). The only readily apparent sexual dimorphism is the expanded body cavity of ripe females during spawning (Bestgen and Propst 1994).

In the past, the silvery minnow was included with other species of the genus *Hybognathus* due to morphological similarities. Phenetic and phylogenetic analyses corroborate the hypothesis that it is a valid taxon, distinctive from other species of *Hybognathus* (Cook *et al.* 1992, Bestgen and Propst 1994). It is now recognized as one of seven species in the genus *Hybognathus* in the United States and was formerly one of the most widespread and abundant minnow species in the Rio Grande basin of New Mexico, Texas, and Mexico (Pflieger 1980, Bestgen and Platania 1991). Currently, *Hybognathus amarus* is the only remaining endemic pelagic spawning minnow in the Middle Rio Grande. The speckled chub (*Extrarius aestivalus*), Rio Grande shiner (*Notropis jemezanus*), phantom shiner (*Notropis orca*), and bluntnose shiner (*Notropis simus*) are either extinct or have been extirpated from the Middle Rio Grande (Bestgen and Platania 1991).

Legal Status

The silvery minnow was federally listed as endangered under the ESA on July 20, 1994 (U.S. Fish and Wildlife Service 1994). The species is also listed as an endangered species by the state of New Mexico. Primary reasons for listing the silvery minnow are described below in the Reasons for Listing section.

Designated critical habitat for the silvery minnow was designated on February 19, 2003 (68 FR 8088). The critical habitat designation extends approximately 157 from Cochiti Dam, Sandoval County, New Mexico downstream to the utility line crossing the Rio Grande, a permanent identified landmark in Socorro County, New Mexico. The critical habitat designation defines the lateral extent (width) as those areas bounded by existing levees or, in areas without levees, 300 feet (ft) or riparian zone adjacent to each side of the bank full stage of the Middle Rio Grande. Some developed lands within the 300 ft lateral extent are not considered critical habitat because they do not contain the primary constituent elements of designated critical habitat and are not essential to the conservation of the silvery minnow. Lands located within the lateral boundaries of the critical habitat designation, but not considered critical habitat include: developed flood control facilities, existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion and irrigation canals outside of natural stream channels, the Low Flow Conveyance Channel, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments. The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta within this area are not included in the critical habitat designation. Except for these Pueblo lands, the remaining portion of the silvery minnow's occupied range in the Middle Rio Grande in New Mexico is designated as critical habitat (68 FR 8088).

Habitat

The silvery minnow travels in schools and tolerates a wide range of habitats (Sublette *et al.* 1990); yet, generally prefers low velocity (<0.33 ft per second) areas over silt or sand substrate that are associated with shallow [< 15.8 inch (in)] braided runs, backwaters or pools (Dudley and Platania 1997). Habitat for the silvery minnow includes stream margins, side channels, and off-channel pools where water velocities are low or reduced from main-channel velocities. Stream reaches dominated by straight, narrow, incised channels with rapid flows are not typically occupied by silvery minnow (Sublette *et al.* 1990, Bestgen and Platania 1991).

Adult silvery minnow are most commonly found in backwaters, pools, and habitats associated with debris piles; whereas, young of year (YOY) occupy shallow, low velocity backwaters with silt substrates (Dudley and Platania 1997). A study conducted between 1994 and 1996 characterized habitat availability and use at two sites in the Middle Rio Grande at Rio Rancho and Socorro. From this study Dudley and Platania (1997) reported that the silvery minnow was most commonly found in habitats with depths less than 19.7 in. Over 85 percent were collected from low-velocity habitats (<0.33 ft/sec) (Dudley and Platania 1997, Watts *et al.* 2002).

Designated Critical Habitat

The Service has determined the primary constituent elements (PCEs) of silvery minnow designated critical habitat based on studies on silvery minnow habitat and population biology (68 FR 8088). They include:

1. A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to the following: backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity – all of which are necessary for each of the particular silvery minnow life-history stages in appropriate seasons (e.g., the silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not increase prolonged periods of low- or no flow, and relatively constant winter flow (November through February));
2. The presence of eddies created by debris piles, pools, or backwaters, or other refuge habitat within unimpounded stretches of flowing water of sufficient length (i.e., river miles) that provide a variation of habitats with a wide range of depth and velocities;
3. Substrates of predominantly sand or silt; and
4. Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1°C (35°F) and less than 30°C

(85°F) and reduce degraded conditions (e.g., decreased dissolved oxygen, increased pH).

These PCEs provide for the physiological, behavioral, and ecological requirements essential to the conservation of the silvery minnow.

Life History

The species is a pelagic spawner that produces 3,000 to 6,000 semi-buoyant, non-adhesive eggs during a spawning event (Platania 1995, Platania and Altenbach 1998). The majority of adults spawn in about a one-month period in late spring to early summer (May to June) in association with spring runoff. Platania and Dudley (2000, 2001) found that the highest collections of silvery minnow eggs occurred in mid- to late May. In 1997, Smith (1999) collected the highest number of eggs in mid-May, with lower frequency of eggs being collected in late May and June. These data suggest multiple silvery minnow spawning events during the spring and summer, perhaps concurrent with flow spikes. Artificial spikes have apparently induced silvery minnow to spawn (Platania and Hoagstrom 1996). It is unknown if individual silvery minnow spawn more than once a year or if some spawn earlier and some later in the year.

Platania (2000) found that development and hatching of eggs are correlated with water temperature. Eggs of the silvery minnow raised in 30°C water hatched in approximately 24 hours while eggs reared in 20-24°C water hatched within 50 hours. Eggs were 0.06 in in size upon fertilization, but quickly swelled to 0.12 in. Recently hatched larval fish are about 0.15 in in standard length and grow about 0.005 in in size per day during the larval stages. Eggs and larvae have been estimated to remain in the drift for 3-5 days, and could be transported from 134 to 223 mi downstream depending on river flows (Platania 2000). Approximately three days after hatching the larvae move to low velocity habitats where food (mainly phytoplankton and zooplankton) is abundant and predators are scarce. YOY attain lengths of 1.5 to 1.6 in by late autumn (U.S. Fish and Wildlife Service 1999). Age-1 fish are 1.8 to 1.9 in by the start of the spawning season. Most growth occurs between June (post spawning) and October, but there is some growth in the winter months. In the wild, maximum longevity is about 25 months, but very few survive more than 13 months (U.S. Fish and Wildlife Service 1999). Captive fish have lived up to four years (C. Altenbach, City of Albuquerque, *pers. comm.* 2003).

Platania (1995) suggested that historically the downstream transport of eggs and larvae of the silvery minnow over long distances was likely beneficial to the survival of their populations. This behavior may have promoted recolonization of reaches impacted during periods of natural drought (Platania 1995). The spawning strategy of releasing floating eggs allows the silvery minnow to replenish populations downstream, but the current presence of diversion dams (Angostura, Isleta, and San Acacia Diversion Dams) prevents recolonization of upstream habitats (Platania 1995). As populations are depleted upstream and diversion structures prevent upstream movements, isolated extirpations of the species through fragmentation may occur (U.S. Fish and Wildlife Service 1999). Adults, eggs and larvae are also transported downstream to Elephant Butte Reservoir. It is believed that none of these fish survive because of poor habitat and predation from reservoir fishes (U.S. Fish and Wildlife Service 1999).

The silvery minnow is herbivorous (feeding primarily on algae); this is indicated indirectly by the elongated and coiled gastrointestinal tract (Sublette *et al.* 1990). Additionally, detritus, including sand and silt, is filtered from the bottom (Sublette *et al.* 1990, U.S. Fish and Wildlife Service 1999).

Population Dynamics

Generally, a population of silvery minnow consists of only two age classes: YOY and Age-1 (U.S. Fish and Wildlife Service 1999). The majority of spawning silvery minnow is one year old. Two year old fish comprise less than 10 percent of the spawning population. High silvery minnow mortality occurs during or subsequent to spawning, consequently very few adults are found in late summer. By December, the majority (greater than 98 percent) of individuals are YOY (Age 0). This population ratio does not change appreciably between January and June, as Age 1 fish usually constitute over 95 percent of the population just prior to spawning.

Platania (1995) found that a single female in captivity could broadcast 3,000 eggs in eight hours. Females produce 3 to 18 clutches of eggs in a 12-hour period. The mean number of eggs in a clutch is approximately 270 (Platania and Altenbach 1998). In captivity, silvery minnow have been induced to spawn as many as four times in a year (C. Altenbach, City of Albuquerque, *pers. comm.* 2000). It is not known if they spawn multiple times in the wild. The high reproductive potential of this fish appears to be one of the primary reasons that it has not been extirpated from the Middle Rio Grande. However, the short life span of the silvery minnow increases the population instability. When two below-average flow years occur consecutively, a short-lived species such as the silvery minnow can be impacted, if not completely eliminated from dry reaches of the river (U.S. Fish and Wildlife Service 1999).

Distribution and Abundance

Historically, the silvery minnow occurred in 2,465 mi of rivers in New Mexico and Texas. They were known to have occurred from Española upstream from Cochiti Lake; in the downstream portions of the Chama and Jemez Rivers; throughout the Middle and Lower Rio Grande to the Gulf of Mexico; and in the Pecos River from Sumner Reservoir downstream to the confluence with the Rio Grande (Sublette *et al.* 1990, Bestgen and Platania 1991). The current distribution of the silvery minnow is limited to the Rio Grande between Cochiti Dam and Elephant Butte Reservoir, which amounts to approximately 5 percent of its historic range.

The construction of mainstem dams, such as Cochiti Dam and irrigation diversion dams have contributed to the decline of the silvery minnow. The construction of Cochiti Dam in particular has affected the silvery minnow by reducing the magnitude and frequency of flooding events that help to create and maintain habitat for the species. In addition, the construction of Cochiti Dam has resulted in degradation of silvery minnow habitat within the Cochiti Reach. Flow in the river at Cochiti Dam is now generally clear, cool, and free of sediment. There is relatively little channel braiding, and areas with reduced velocity and sand or silt substrates are uncommon. Substrate immediately downstream of the dam is often armored cobble (rounded rock fragments generally 3 to 12 in in diameter). Further downstream the riverbed is gravel with some sand

material. Ephemeral tributaries including Galisteo Creek and Tonque Arroyo introduce sediment to the lower sections of this reach, and some of this is transported downstream with higher flows (U.S. Fish and Wildlife Service 1999, 2001). The Rio Grande below Angostura Dam becomes a predominately sand bed river with low, sandy banks in the downstream portion of the reach. The construction of Cochiti Dam also created a barrier between silvery minnow populations (U.S. Fish and Wildlife Service 1999). As recently as 1978, the silvery minnow was collected upstream of Cochiti Lake; however surveys since 1983 suggest that the fish is now extirpated from this area (U.S. Fish and Wildlife Service 1999).

Silvery minnow catch rates declined two to three orders of magnitude between 1993 and 2004. Additionally, relative abundance of silvery minnow declined from approximately 50 percent of the total fish community in 1995 to about 5 percent in 2004. However, in 2004, the October density of silvery minnow was significantly higher ($p < 0.05$) than in 2003 and autumnal catch rates increased by over an order of magnitude between those years. Silvery minnow catch rates in 2004 were comparable to those in 2001. Catch rates in 2005 were even higher. October catch rates in 2005 (3,899) increased nearly 50 times over catch rates for 2004 (78) (Dudley *et al.* 2005).

Augmentation, throughout this period, likely sustained the silvery minnow population. Approximately, 1,000,000 silvery minnow have been released (primarily in the Angostura Reach) since 2000 (see Environmental Baseline). Captively propagated and released fish supplemented the native adult population and most likely also took advantage of the good spawning conditions of 2004 and 2005.

The silvery minnow was the most abundant taxon in October 2005 captures; it comprised about 72 percent of the total catch (Dudley *et al.* 2005). The species was nearly twice as abundant as the next most-abundant taxon (western mosquitofish). The increase in abundance of silvery minnow in 2005 has been comparable to previous years with above average precipitation (e.g., mid-1990s) (Dudley *et al.* 2005). These monitoring results from 2005 indicate that the status of the species has improved markedly compared to Fall of 2004.

Increased discharge in the Rio Grande during 2004 contrasted with the extended low-flow conditions observed throughout the Middle Rio Grande during 2003 and 2002. The timing of the 2004 runoff flow was typical of a flow increase that would normally occur at the onset of the spring runoff period. Elevated and extended flows during 2004 likely resulted in more favorable conditions for the growth and survivorship of newly hatched silvery minnow larvae. It is possible that even low numbers of eggs and larvae could have resulted in greatly increased recruitment success because of the inundation of shoreline habitats, abandoned side channels, and backwaters. Low velocity and shallow areas provide the warm and productive habitats required by larval fishes to successfully complete their early life history.

Spring runoff in 2005 was also above average, leading to a peak of over 6,000 cfs at Albuquerque and sustained high flows ($> 3,000$ cfs) for more than two months. These flows improved conditions for both spawning and recruitment. October monitoring indicated a

significant increase in silvery minnow in the Middle Rio Grande, increasing to 3,899 total silvery minnow captured from 2 and 78 in 2003 and 2004, respectively.

In 2006, however, spring runoff was extremely low and although there were several peaks in the natural hydrograph in June, July, August, and September, only a small number of silvery minnow eggs were documented in June and July. October samples yielded only 166 silvery minnow. None of the silvery minnow collected were YOY, indicating poor recruitment, likely due to channel drying in June and July, after the late and minimal spawn (Dudley et al. 2006a).

Middle Rio Grande Distribution

Since the early 1990s, the density of silvery minnow generally increased from upstream (Angostura Reach) to downstream (San Acacia Reach). During surveys in 1999, over 98 percent of the silvery minnow captured were downstream of San Acacia Diversion Dam (Dudley and Platania 2002). This distributional pattern has been observed since 1994 (Dudley and Platania 2002) and is attributed to downstream drift of eggs and larvae and the inability of adults to repopulate upstream reaches because of diversion dams.

However, in 2004 and 2005, Dudley *et al.* (2005 and 2006a) found that this pattern reversed. Catch rates were highest in the Angostura Reach and approximately equal in the Isleta and San Acacia Reaches. The Angostura Reach yielded the most silvery minnow (n=2,226) in 2004, followed by the Isleta Reach (n=442), and San Acacia Reach (n=371). Routine augmentation of silvery minnow in the Angostura Reach (nearly 900,000 since 2000), and the transplanting of silvery minnow rescued from drying reaches (approximately 770,000 since 2003) explains this change in pattern. Additionally, good spawning conditions (i.e., high and sustained spring runoff) throughout the Middle Rio Grande during April and May followed by wide-scale drying in the Isleta and San Acacia Reaches from June-September exacerbated the skew. High spring runoff and perennial flow in the Angostura Reach appeared to result in relatively high survival and recruitment of larval and juvenile silvery minnow compared to previous drought years (2002-2003). In contrast, large portions of the Rio Grande south of Isleta Diversion Dam were dewatered in 2004 and young silvery minnow in these areas were either subjected to poor recruitment conditions (i.e., lack of nursery habitats during low-flows) or they were trapped in drying pools where they perished.

Sampling in early 2006 indicates populations are again higher downstream. Of the 6,143 silvery minnow caught in March 2006, 33 were found in the Angostura Reach, 2,445 were found in the Isleta Reach, and 3,665 were caught in the San Acacia Reach.

Reasons for Listing/Threats to Survival

The silvery minnow was federally listed as endangered for the following reasons:

1. Regulation of stream waters, which has led to severe flow reductions, often to the point of dewatering extended lengths of stream channel;

2. Alteration of the natural hydrograph, which impacts the species by disrupting the environmental cues the fish receives for a variety of life functions, including spawning;
3. Both the stream flow reductions and other alterations of the natural hydrograph throughout the year can severely impact habitat availability and quality, including the temporal availability of habitats;
4. Actions such as channelization, bank stabilization, levee construction, and dredging result in both direct and indirect impacts to the silvery minnow and its habitat by severely disrupting natural fluvial processes throughout the floodplain;
5. Construction of diversion dams fragment the habitat and prevent upstream migration;
6. Introduction of nonnative fishes that directly compete with, and can totally replace the silvery minnow, as was the case in the Pecos River, where the species was totally replaced in a time frame of 10 years by its congener the plains minnow (*Hybognathus placitus*); and
7. Discharge of contaminants into the stream system from industrial, municipal, and agricultural sources also impact the species (U.S. Fish and Wildlife Service 1993b, 1994).

These reasons for listing continue to threaten the species throughout its currently occupied range in the Middle Rio Grande.

Recovery Efforts

The final recovery plan for the silvery minnow was released in July 1999 (U.S. Fish and Wildlife Service 1999). The Recovery Plan has been updated and revised and a draft revised Recovery Plan (U.S. Fish and Wildlife Service 2007) was released for public comment on January 18, 2007 (72 FR 2301).

The draft revised Recovery Plan describes recovery goals for the silvery minnow and actions to complete these (U.S. Fish and Wildlife Service 2007). The three goals identified for the recovery and delisting of the silvery minnow are:

1. Prevent the extinction of the silvery minnow in the middle Rio Grande of New Mexico.
2. Recover the silvery minnow to an extent sufficient to change its status on the List of Endangered and Threatened Wildlife from endangered to threatened (downlisting).
3. Recover the silvery minnow to an extent sufficient to remove it from the List of Endangered and Threatened Wildlife (delisting).

Downlisting (Goal 2) for the silvery minnow may be considered when three populations (including at least two that are self-sustaining) of the species have been established within the historic range of the species and have been maintained for at least five years.

Delisting (Goal 3) of the species may be considered when three self-sustaining populations have been established within the historic range of the species and they have been maintained for at least ten years (U.S. Fish and Wildlife Service 2007).

ENVIRONMENTAL BASELINE

Under section 7(a)(2) of the ESA, when considering the effects of the action on federally listed species, we are required to take into consideration the environmental baseline. Regulations implementing the ESA (50 FR 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; the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation; and the impacts of State and private actions that are contemporaneous with the consultation in progress. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

Drought, as an overriding condition of the last decade in the southwest, is an important factor in the environmental baseline. However, stream conditions in 2004 and 2005 improved over previous years. Habitat and survey data was collected at each of the proposed drain outfall sites in November 2005. Habitat data collected included stream flow, water depth and velocity distribution, cover availability, substrate composition, water temperature, and water quality (pH, DO, conductivity, and nutrients). The United States Geological Survey (USGS) in Albuquerque, New Mexico reported that stream flow conditions in 2005 were well above average to significantly above average statewide leading to a peak of over 6,000 cfs at Albuquerque and sustained high flows (> 3,000 cfs) for more than two months. These flows improved conditions for both spawning and recruitment.

The river in the upper Isleta Reach is a relatively narrow, confined channel with very little sinuosity. Some braiding is occurring and several unvegetated islands occur in the channel. Vegetation has encroached along the banks, further confining the flows. The MRG has often experienced zero flow conditions in this section resulting in occasional fish kills.

The 2006 spring runoff was well below average because of lower than normal snowpack. In May 2006, year to date precipitation was well below average with the snow pack at 20 percent of average in the Rio Grande Basin. Fortunately, a strong monsoon season led to the wettest period of record in July and August. Consequently, only 26.5 mi of river dried in the summer of 2006, the lowest amount since 2001. Despite this monsoonal precipitation, reservoir levels continue to be below average across the state. It will take a least another year or two of well above average precipitation to reach pre-drought reservoir conditions.

The 2007 runoff was above average. Additionally, a one time deviation in Cochiti operations (Corps 2007) allowed managed releases of native flow during the spawn. Flows below Cochiti exceeded 3,000 cfs for ten days in May.

Since 1996, Reclamation has relied heavily on leases of SJC water to provide supplemental water by the Middle Rio Grande Endangered Species Act Collaborative Program to implement the 2003 Middle Rio Grande Water Operations Biological Opinion. Supplemental water has been used to create spawning pulses, and recruitment flows for the silvery minnow, minimum flow requirements. From 1996-2003, Reclamation leased an average of 46,318 afy of SJC water from willing leasers to provide the average (1996-2001) of 63,109 afy of supplemental water used for silvery minnow conservation.

Status of the Species within the Action Area

The population of silvery minnow in the Action Area and throughout the Middle Rio Grande is highly variable over time (see Status of the Species). The most recent August 2006 sample reported silvery minnow in the action area at an estimated density of 2.4 per 100 meters squared (m^2) (Dudley et al. 2006).

Past actions have eliminated and severely altered habitat conditions for the silvery minnow. These actions can be broadly categorized as changes to the natural hydrology of the Rio Grande and changes to the morphology of the channel and floodplain. Other factors that influence the environmental baseline are water quality, the release of captively propagated silvery minnow; silvery minnow rescue efforts, on-going research efforts, and past projects in the Middle Rio Grande. Also of importance is the current drought, the expected weather pattern for the near future, and how it may affect flow in the Rio Grande. Each of these topics is discussed below.

Changes in Hydrology

There have been two primary changes in hydrology as a result of the construction of dams on the Rio Chama and Rio Grande that affect the silvery minnow: Loss of water and changes to the magnitude and duration of peak flows.

Loss of Water

Prior to measurable human influence on the system, up to the fourteenth century, the Rio Grande was a perennially flowing, aggrading river with a shifting sand substrate (Biella and Chapman 1977). There is now strong evidence that the Middle Rio Grande first began drying up periodically after the development of Colorado's San Luis Valley in the mid to late 1800s (Scurlock 1998). After humans began exerting more influence on the river, there are two documented occasions when the river became intermittent; during prolonged, severe droughts in 1752 and 1861 (Scurlock 1998). The silvery minnow historically survived low-flow periods because such events were infrequent and of lesser magnitude than they are today. There were also no diversion dams to block repopulation of upstream areas, the fish had a much greater geographical distribution, and there were oxbow lakes, cienegas, and sloughs associated with the Rio Grande that supported fish until the river became connected again.

Water management and use has resulted in a large reduction of suitable habitat for the silvery minnow. Agriculture accounts for 90 percent of surface water consumption in the Middle Rio Grande (Bullard and Wells 1992). The average annual diversion of water in the Middle Rio Grande by the Middle Rio Grande Conservation District (MRGCD) was 535,280 af for the period from 1975 to 1989 (U.S. Bureau of Reclamation 1993). In 1990, total water withdrawal (groundwater and surface water) from the Rio Grande Basin in New Mexico was 1,830,628 af, significantly exceeding a sustainable rate (Schmandt 1993). Water withdrawals have not only reduced overall flow quantities, but also caused the river to become locally intermittent and/or dry for extended reaches. Irrigation diversions and drains significantly reduce water volumes in the river. However, the total water use (surface and groundwater) in the Middle Rio Grande by the MRGCD may range from 28 – 37 percent (S.S. Papadopulos & Associates, Inc. 2000; U.S. Geological Survey 2002). A portion of the water diverted by the MRGCD returns to the river and may be re-diverted (in some cases more than once) (Bullard and Wells 1992; MRGCD, *in litt.* 2003).

River reaches particularly susceptible to drying within the action area are, a 5-mi reach near Tome (river miles 150-155), and a 5-mi reach near the U.S. Highway 60 Bridge (river miles 127-132). Extensive fish kills, including tens of thousands of silvery minnow, have occurred in these reaches when the river has dried (C. Shroeder, Service, *pers. comm.* 2002). Since 1996, an average of 32 mi of the Rio Grande has dried, mostly in the San Acacia Reach. The most extensive drying occurred in 2003 and 2004 when 60 and 68.7 mi, respectively, were dewatered. Most documented drying events lasted an average of two weeks, before flows returned.

Predatory birds have been observed hunting and consuming fish from isolated pools during river intermittence (J. Smith, NMESFO, *pers. comm.* 2003). Although the number of fish present in any pool is unknown, it must be assumed that many of the fish preyed upon in these pools are silvery minnow. Thus, while some dead silvery minnow were collected during the shorter drying events, it is assumed that many more mortalities occurred than were documented.

Changes to Size and Duration of Peak Flows

Water management has also resulted in a loss of peak flows that historically initiated spawning. The reproductive cycle of the silvery minnow is tied to the natural river hydrograph. A reduction in peak flows and/or altered timing of flows may inhibit reproduction. Since completion of Elephant Butte Dam in 1916, four additional dams have been constructed on the Middle Rio Grande, and two have been constructed on one of its major tributaries, the Rio Chama (Scurlock 1998). Construction and operation of these dams, which are either irrigation diversion dams (Angostura, Isleta, San Acacia) or flood control and water storage dams (Elephant Butte, Cochiti, Abiquiu, El Vado), have modified the natural flow of the river. Mainstem dams store spring runoff and summer inflow, which would normally cause flooding, and release this water back into the river channel over a prolonged period of time. These releases are often made during the winter months, when low-flows would normally occur. The releases depart significantly from natural conditions, and can substantially alter the habitat. In spring and summer, artificially low-

flows may limit the amount of habitat available to the species and may also limit dispersal of the species (U.S. Fish and Wildlife Service 1999).

Mainstem dams and the altered flows they create can affect habitat by preventing overbank flooding, trapping nutrients, altering sediment transport regimes, prolonging summer base flows, modifying or eliminating native riparian vegetation, and creating reservoirs that favor non-native fish species. These changes may affect the silvery minnow by reducing its food supply; altering its preferred habitat, preventing dispersal, and providing a continual supply of non-native fish that may compete with or prey upon them. Altered flow regimes may also result in improved conditions for other native fish species that occupy the same habitat, causing those populations to expand at the expense of the silvery minnow (U.S. Fish and Wildlife Service 1999).

In addition to providing a cue for spawning, flood flows also maintain a channel morphology to which the silvery minnow is adapted. The changes in channel morphology that have occurred from the loss of flood flows are discussed below.

Changes in Channel Morphology

Historically, the Rio Grande was sinuous, braided, and freely migrated across the floodplain. Changes in natural flow regimes, narrowing and deepening of the channel, and restraints to lateral channel migration (i.e., jetty jacks) adversely affected the silvery minnow. These effects result directly from constraints placed on channel capacity by structures built in the floodplain. These anthropogenic changes have and continue to degrade and eliminate spawning, nursery, feeding, resting, and refugia areas required for species' survival and recovery (U.S. Fish and Wildlife Service 1993a).

The active river channel within occupied habitat is being narrowed by the encroachment of vegetation, resulting from continued low-flows and the lack of overbank flooding. The lack of flood flows has allowed non-native riparian vegetation such as salt cedar and Russian olive to encroach on the river channel (U. S. Bureau of Reclamation 2001). These non-native plants are very resistant to erosion, resulting in narrowing of the channel. When water is confined to a narrower cross-section, its velocity increases and the ability to carry sediments is enhanced. Fine sediments such as silt and sand are carried away leaving coarser bed materials such as gravel and cobble. Habitat studies during the winter of 1995 and 1996 (Dudley and Platania 1996), demonstrated that a wide, braided river channel with low velocities resulted in higher catch rates of silvery minnow, and narrower channels resulted in fewer fish captured. The availability of wide, shallow habitats that are important to the silvery minnow is decreasing. Narrow channels have few backwater habitats with low velocities that are important for silvery minnow fry and YOY.

Within the current range of the silvery minnow, human development and use of the floodplain have greatly restricted the width available to the active river channel. A comparison of river area between 1935 and 1989 shows a 52 percent reduction, from 26,598 acres (10,764 ha) to 13,901 acres (5,626 ha) (Crawford *et al.* 1993). These data refer to the Rio Grande from Cochiti Dam downstream to the "Narrows" in Elephant Butte Reservoir. Within the same stretch, 234.6 mi of

levees occur, including levees on both sides of the river. Analysis of aerial photography taken by BOR in February 1992, for the same river reach, shows that of the 180 mi of river, only 1 mi, or 0.6 percent of the floodplain has remained undeveloped.

Development in the floodplain, makes it difficult, if not impossible, to send large quantities of water downstream that would create low velocity side channels that the silvery minnow prefers. As a result, reduced releases have decreased available habitat for the silvery minnow and allowed encroachment of non-native species into the floodplain.

Water Quality

Both point (pollution discharges from a pipe) and non-point (diffuse sources of pollution) sources affect the Middle Rio Grande. Major point sources are WWTPs and feedlots. Major non-point sources include agricultural activities (e.g., fertilizer and pesticide application, livestock grazing), storm water run off, and mining activities.

Effluents from WWTPs contain contaminants that may affect the water quality of the river. For that reason the water quality of the effluent is extremely important. The largest WWTP discharges are from two Rio Rancho facilities and Bernalillo (mean annual discharge flows are 80.4, 2.5, 0.9, and 0.7 cfs, respectively) (Bartolino and Cole 2002). Since 1998, total residual chlorine (chlorine) and ammonia, as nitrogen (ammonia), have been discharged unintentionally at concentrations that exceed protective levels for the silvery minnow.

Chlorine concentrations of 0.013 mg/L can be harmful to the silvery minnow. Records also show that the monthly maximum concentration of ammonia during July 2001 was 14 mg/L. At pH 8 and water temperature of 25 °C, ammonia concentrations as low of 3.1 mg/L can be harmful to larval fathead minnow (U.S. Environmental Protection Agency 1999). The fathead minnow has been suggested as a surrogate to evaluate the effects of various chemicals on the silvery minnow (Buhl 2002).

Although we do not have complete records for the Rio Rancho and Bernalillo WWTPs, in the summer of 2000, the Rio Rancho WWTP released approximately one million gallons of raw sewage into the Rio Grande. Chlorine treatment was maximized in an attempt to reduce the public health risk. Ammonia was reported at 37 mg/L on July 13, 2000, and at 17.1 mg/L on July 27, 2000 (City of Rio Rancho, *in litt.* 2000). Nonetheless, no violations of chlorine or ammonia effluent limits were recorded. This suggests that averaging measurements and/or the frequency of water quality measurements is insufficient to detect water quality situations that would be toxic to silvery minnow. The Rio Rancho WWTP now uses ultraviolet disinfection (Dee Fuerst, City of Rio Rancho, *pers. comm.* 2003). However, high concentrations of ammonia could still be discharged during an upset. Spills from the Rio Rancho City sewage system are treated with chlorine, which may lead to chlorine being flushed to the Rio Grande.

In addition to chlorine and ammonia, WWTP effluents may also include cyanide, chloroform, organophosphate pesticides, semi-volatile compounds, volatile compounds, heavy metals, and pharmaceuticals and their derivatives, which can pose a health risk to silvery minnow when

discharged in concentrations that exceed the protective water quality criteria (J. Lusk, Service, *in litt.* 2003). Even if the concentration of a single element or compound is not harmful by itself, chemical mixtures may be more than additive in their toxicity to silvery minnow (Buhl 2002). The long-term effects and overall impacts of chemicals on the silvery minnow are not known.

Large precipitation events wash sediments and pollutants into the river from surrounding lands through storm drains and intermittent tributaries. Contaminants of concern to the silvery minnow that are frequently found in storm water include the metals aluminum, cadmium, lead, mercury, and zinc, organics such as oils, the industrial solvents trichloroethene and tetrachloroethene (TCE), and the gasoline additive methyl tert-butyl ether (U.S. Geological Survey 2001).

Harwood (1995) studied the North Floodway Channel (Floodway) of Albuquerque, which drains an urban area of about 90 square miles and crosses Pueblo of Sandia lands. He found that storm water contributions of dissolved lead, zinc, and aluminum were significant and posed a threat to the water quality of the Rio Grande. Because the Floodway crosses lands of the Pueblo of Sandia and enters their portion of the Rio Grande, they requested that the Environmental Protection Agency conduct toxicity tests on water in the Rio Grande collected below the Floodway. Aquatic crustaceans exposed to this water were found to have significant reproductive impairment and mortality when compared with controls. Additionally, larval fish also experienced significant mortality and/or narcosis when exposed to water and bed sediment collected from this same area on April 22, 2002 (http://oaspub.epa.gov/enviro/pcsdet_reports_detail_report?npdesid=NM0022250). This study indicates that storm water runoff can impact the water quality of the Rio Grande and the aquatic organisms that live in the river.

In a cooperative study, the New Mexico Environment Department (NMED) detected elevated polychlorinated biphenyl (PCBs) contamination of the San Jose Drain (NMED DOE Oversight Bureau Correspondence and Transmittal Letter, signed S. Yanicak, to G. Turner, DOE, Subject: 2002 – 2003 Cooperative Polychlorinated Biphenyl (PCB) Study Data, Dated June 6, 2006). The San Jose Drain empties into an area near the confluence of the Tijeras Arroyo (and SDC) with the Rio Grande. The PCB pollution was detected in sediment and storm water runoff and in fish tissue collected downstream. Concentrations of PCBs in fish tissues were elevated above the threshold by which fish consumption advisories would recommend that no fish be eaten by people (R. Ford-Schmid, NMED, electronic communication, June 24, 2004). The San Jose Drain empties into the Rio Grande in close proximity of the SDC Island Site increasing the probability that sediment forming the island may be contaminated with PCBs as well.

Sediment is the sand, silt, organic matter, and clay portion of the river bed, or the same material suspended in the water column. Ong *et al.* (1991) recorded the concentrations of trace elements and organochlorine pesticides in suspended sediment and bed sediment samples collected from the Middle Rio Grande between 1978 and 1988. These data were compared to numerical sediment quality criteria (Probable Effects Criteria [PEC]) proposed by MacDonald *et al.* (2000). According to MacDonald *et al.* (2000) most of the PEC provide an accurate basis for predicting sediment toxicity to aquatic life and a reliable basis for assessing sediment quality in freshwater

ecosystems. Although the PEC were developed to assess bed (bottom) sediments, they also provide some indication of the potential adverse effects to organisms consuming these same sediments when suspended in the water column.

Semi-volatile organic compounds are a large group of environmentally important organic compounds. Three groups of compounds, polycyclic aromatic hydrocarbons (PAHs), phenols, and phthalate esters, were included in the analysis of bed sediment collected by the USGS (Levings *et al.* 1998). These compounds were abundant in the environment, are toxic and often carcinogenic to organisms, and could represent a long-term source of contamination. The analysis of the PAH data by Levings *et al.* (1998) show one or more PAH compounds were detected at 14 sites along the Rio Grande with the highest concentrations found below Albuquerque and Santa Fe. Polycyclic aromatic hydrocarbons and other semi-volatile compounds affect the sediment quality of the Rio Grande and may affect silvery minnow behavior, habitat, feeding, and health.

Pesticide contamination occurs from agricultural activities, as well as from the cumulative impact of residential and commercial landscaping activities. The presence of pesticides in surface water depends on the amount applied, timing, location, and method of application. Water quality standards have not been set for many pesticides, and existing standards do not consider cumulative effects of several pesticides in the water at the same time. Roy *et al.* (1992) reported that DDE, a degradation product of DDT, was detected most frequently in whole body fish collected throughout the Rio Grande. He suggested that fish in the lower Rio Grande may be accumulating DDE in concentrations that may be harmful to fish and their predators.

In addition to the compounds discussed above, several other constituents are present and affect the water quality of the Rio Grande. These include nutrients such as nitrates and phosphorus, total dissolved solids (salinity), and radionuclides. Each of these also has the potential to affect the aquatic ecosystem and health of the silvery minnow. As the river dries, pollutants will be concentrated in the isolated pools. Even though these pollutants do not cause the immediate death of silvery minnow, the evidence suggests that the amount and variety of pollutants present in the Rio Grande, could compromise their health and fitness (Rand and Petrocelli 1985).

Silvery Minnow Propagation and Augmentation

In 2000, the Service identified captive propagation as an appropriate strategy to assist in the recovery of the silvery minnow. Captive propagation is conducted in a manner that will, to the maximum extent possible, preserve the genetic and ecological distinctiveness of the silvery minnow and minimize risks to existing wild populations.

Silvery minnow are currently housed at four facilities in New Mexico including: the Dexter Fish Hatchery; New Mexico State University Coop Unit (Las Cruces); the Service's New Mexico Fishery Resources Office (NMFRO), and the City of Albuquerque's propagation facilities. These facilities are actively propagating and rearing silvery minnow. Silvery minnow are also held in South Dakota at the U.S. Geological Survey, Biological Resources Division Lab, but there is no active spawning program at this facility.

Since 2000 approximately 1,000,000 silvery minnow have been propagated using both adult wild silvery minnow and wild caught eggs and then released into the wild. Wild gravid adults are successfully spawned in captivity at the City's propagation facilities. Eggs are raised and released as larval fish. Marked fish have been released by the NMFRO since 2002 under a formal augmentation effort funded by the Collaborative Program. Silvery minnow are released into the Angostura Reach of the river near Alameda Bridge to ensure downstream repopulation. Eggs left in the wild have a very low survivorship and this ensures that an adequate number of spawning adults are present to repopulate the river each year. While hatcheries continue to successfully spawn silvery minnow, wild eggs are collected to ensure genetic diversity within the remaining population.

Genetic Diversity

Genetic data have been collected for the Rio Grande silvery minnow. The data set includes information from eight generations: one generation that preceded the precipitous decline that occurred in the last decade (1987), three generations that preceded the augmentation program (1999, 2000, 2001; Alò & Turner, 2005), and four generations that were supplemented with captively spawned and/or captively reared stocks (2002-2005; Turner et al. 2005). The following information was derived from studies of this data set.

Overall, mitochondrial (mt) DNA gene diversity declined nearly 18 percent between 1987 and 2005. In addition, researchers have identified other changes:

- There have been two sharp declines in mitochondrial haplotype diversity in the "wild" Rio Grande silvery minnow population. The first occurred in 1999, the second in 2001. Each loss of diversity followed a sharp decline in abundance of Rio Grande silvery minnow: between 1995 and 1997, and again between 1999 and 2000, catch rates declined by an order of magnitude (Dudley et al. 2004). These declines in diversity coincided with extensive river drying in the San Acacia Reach of the Rio Grande.
- Microsatellite allelic diversity was less in 1999, but detected diversity was greater from 1999 to 2002. Although numerical abundance of the wild population continued to decline drastically after 2001, reaching extremely low levels in 2003, there was no substantial loss of allelic diversity over that time period.
- Declines in heterozygosity were recorded for the Rio Grande silvery minnow from 1987 to 1999 and between 2000 and 2002. However, heterozygosity increased between 2002 and 2005. Supplemental stocking with captively-reared wild caught-eggs between 2001 and 2003 may have temporarily alleviated loss of alleles and heterozygosity in the wild (Turner et al. 2004).

Permitted and/or Authorized Take

Take is authorized by section 10, and incidental take is permitted under section 7. These permits and/or authorizations are issued by the Service. Applicants for section 10 permits must also

acquire a permit from the State to “take” or collect silvery minnow. Many of the permits issued under section 10 allow take for the purpose of collection and salvage of silvery minnow and eggs for captive propagation. Eggs, larvae, and adults are also collected for scientific studies to further our knowledge about the species and how best to conserve the silvery minnow. Because of the population decline from 2002-2004, the Service has reduced the amount of take permitted for voucher specimens in the wild.

Incidental take of silvery minnow is authorized through section 7 consultation associated with the 2003 BO, the City of Albuquerque Drinking Water Project (U.S. Fish and Wildlife Service 2004), the Isleta Island Removal Project, the Tiffany Plug Removal Project, and the Interstate Stream Commission’s (ISC) Habitat Restoration Project. In 2005 the Service revised the Incidental Take Statement for the 2003 BO using a formula that incorporates October monitoring data, habitat conditions during the spawn (spring runoff), and augmentation. Annual estimated take for the 2003 BO now fluctuates relative to the total number of RGSM found in October across 20 population monitoring locations.

Factors Affecting Species Environment within the Action Area

On the Middle Rio Grande, the following past and present federal, state, private, and other human activities, in addition to those discussed above, have affected the silvery minnow and its designated critical habitat:

1. Release of Carryover Storage from Abiquiu Reservoir to Elephant Butte Reservoir: The Army Corps of Engineers (Corps) consulted with the Service on the release of water during the winter of 1995. Ninety-eight thousand af of water was released from November 1, 1995 to March 31, 1996, at a rate of 325 cfs. This discharge is above the historic winter flow rate. Substantial changes in the flow regime that do not mimic the historic hydrograph can be detrimental to the silvery minnow.
2. Creation of a Conservation Pool for Storage of Native Water in Abiquiu and Jemez Canyon Reservoirs and Release of a Spike Flow: The City created space (100,000 af) in Abiquiu Reservoir and the Corps created space in Jemez Canyon Reservoir to store Rio Grande Compact credit water for use in 2001, 2002, and 2003 for the benefit of listed species. The conservation pool was created with the understanding that the management of this water would be decided in later settlement meetings or during water operations conference calls. In addition, a supplemental release (spike) occurred in May 2001 to accommodate movement of sediment as a part of habitat restoration and construction on the Rio Grande and Jemez River on the Santa Ana Pueblo.
3. Programmatic Biological Opinions on the Effects of Actions Associated with the U.S. Bureau of Reclamation’s, U.S. Army Corps of Engineers’, and non-federal Entities’ Discretionary Actions Related to Water Management on the Middle Rio Grande: In 2001 and 2003, the Service issued jeopardy biological opinions on the effects of water operations and management activities in the Middle Rio Grande on the silvery minnow and flycatcher. In 2002, the Service issued a jeopardy biological opinion for the silvery

minnow. The current opinion, issued on March 17, 2003, contains a Reasonable and Prudent Alternative to jeopardy with multiple elements. These elements set forth a flow regime in the Middle Rio Grande and describe habitat improvements necessary to alleviate jeopardy to both the silvery minnow and flycatcher. For example, the elements require augmentation in the Rio Grande of an additional million silvery minnow over the life of the project and 484 acres of habitat restoration.

4. Silvery minnow salvage and relocation: During river drying, the Service's silvery minnow salvage crew captures and relocates silvery minnow. Since 1996, approximately 770,000 silvery minnow have been rescued and relocated to wet reaches, the majority of which were released in the Angostura Reach. Studies are being conducted to determine survival rates for salvaged fish.
5. Middle Rio Grande Conservation District: Improvements to physical and operational components of the irrigation system since 2001 have contributed to a reduction in the total diversion of water from the Rio Grande by the MRGCD. Prior to 2001, average diversions were 630,000 afy and now average 370,000 afy. The change was possible because of the considerable efforts of MRGCD to install new gages, automated gates at diversions, and scheduling and rotation of diversions among water users. The new operations reduce the amount of water diverted; however, this also reduces return flows that previously supported flow in the river. The river below Isleta Diversion Dam may be drier than in the past, but small inflows may contribute to maintaining flows.
6. Pilot Water Leasing Project: The City of Albuquerque and Albuquerque Bernalillo County Water Utility Authority with six conservation groups established a fund in February 2007 that will provide the opportunity to lease water from Rio Grande farmers and have that water remain in the river channel to support the silvery minnow. This program supports the need for reliable sources of water to support conservation programs as identified by the MRGESCP (2004).

Summary

The remaining population of the silvery minnow is restricted to approximately 5 percent of its historic range. Every year since 1996, there has been at least one drying event in the river that has negatively affected the silvery minnow population. The population is unable to expand its distribution because poor habitat quality and Cochiti Dam prevent upstream movement and Elephant Butte Reservoir blocks downstream movement (U.S. Fish and Wildlife Service 1999). Augmentation of silvery minnow with captive-reared fish will continue; however, continued monitoring and evaluation of these fish is necessary to obtain information regarding the survival and movement of individuals.

Water withdrawals from the river and water releases from dams severely limit the survival of silvery minnow. The consumption of shallow groundwater and surface water for municipal, industrial, and irrigation uses continues to reduce the amount of flow in the Rio Grande and eliminate habitat for the silvery minnow (U.S. Bureau of Reclamation 2003). However, under

state law, the municipal and industrial users are required to offset the effects of groundwater pumping on the surface water system. The City of Albuquerque, for example, has been offsetting their surface water depletions with 60,000 acft returning to the river from the WWTP (U.S. Bureau of Reclamation 2003). The effect of water withdrawals means that discharge from WWTPs and irrigation return flows will have greater importance to the silvery minnow and a greater impact on water quality. Lethal levels of chlorine and ammonia have been released from the WWTPs in the last several years. In addition, a variety of organic chemicals, heavy metals, nutrients, and pesticides have been documented in storm water channels feeding into the river and contribute to the overall degradation of water quality.

Various conservation efforts have been undertaken in the past and others are currently being carried out in the middle Rio Grande. Silvery minnow abundance has increased over 2002-2003 population levels. However, the threat of extinction for the silvery minnow continues because of increased reliance on captive propagation, the fragmented and isolated nature of currently occupied habitat, and the absence of silvery minnow in other parts of the historic range.

IV. EFFECTS OF THE ACTION

'Effects of the Action' refers 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, which will be added to the environmental baseline. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur. Silvery minnow are present in the Isleta Reach (Dudley et al. 2006) and are expected to be present within the action area. The primary adverse effects of the proposed action on the silvery minnow will result from excavation of trenches for anchoring cottonwoods and the mobilization of sediment during construction. Approximately 0.5 to 1.0 acres of wetted habitat will be created at each of the three selected sites. The total amount of habitat created in terms of number of acres however, is not the most critical measure because perennially wetted habitats such as these could be disproportionately important to silvery minnow.

Direct Effects

The proposed action is likely to have direct short-term adverse effects on silvery minnow during construction activities. Silvery minnow may be harmed or harassed as trenches are excavated along the bankline, cottonwoods are placed into trenches, and trenches are backfilled with rock or other material because any silvery minnow within the immediate area will move away. Fleeing from disturbance represents an expenditure of energy that the fish would not have without the project. However, this form of harassment would be short in duration. The potential number of individuals within the immediate vicinity of the equipment affected will likely be relatively low.

Additionally, excavation along the bankline will mobilize sediments and may expose contaminants, impairing water quality. Direct effects to the silvery minnow from excess suspended sediments include: alarm reaction, abandonment of cover, avoidance response,

reduction in feeding rates, increase in coughing rate, increased respiration, physiological stress, poor condition, reduced growth, delayed hatching, and mortality (Newcombe and Jensen 1996).

Direct effects to designated critical habitat include making a total of approximately 3 acres of designated critical habitat unsuitable and unusable during construction.

Indirect effects

Indirect adverse effects are also possible throughout the life of the project. The pools are intended to serve as an attractant to silvery minnow and increased densities of silvery minnow may occur in the created pools. Fish congregated in pools may be more vulnerable to adverse water quality conditions that may occur in the pools. Decreased water quality can decrease survival, reproduction, or lead to death. Predatory fish may also be attracted to the perennial pools and prey on silvery minnows. Additionally, if pools become isolated and subsequently dry, silvery minnows may become stranded and die.

While the intent of the project is to create beneficial habitat features for silvery minnow, much remains unknown regarding the features. An unforeseen consequence of the project could include adverse modification or destruction of up to 3 acres designated critical habitat.

Beneficial Effects

The proposed action is intended to establish habitats that support the silvery minnow. Eddies and pools associated with debris piles provide refugial habitat in flowing reaches (Service 2003). These habitat features, under these conditions, are likely to have beneficial effects on the silvery minnow and its habitat, contributing to the improvement of the status of silvery minnow into the future.

Isolated perennial pools associated with snags may also provide refugial habitats during extreme drying events. However, the extent to which these habitats can support silvery minnows is unknown. The monitoring plan associated with the project, in addition to other, related research is designed to determine what, if any long-term benefits these pools provide during extremely dry conditions.

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 ESA.

Cumulative effects include:

- Increases in development and urbanization in the historic floodplain that result in reduced peak flows because of the flooding threat. Development in the floodplain makes it more difficult, if not impossible, to transport large quantities of water that would overbank and create low velocity habitats that silvery minnow prefer. Development also reduces overbank flooding favorable for the silvery minnow.

- Increased urban use of water, including municipal and private uses. Further use of surface water from the Rio Grande will reduce river flow and decrease available habitat for the silvery minnow.
- Contamination of the water (i.e., sewage treatment plants, runoff from small feed lots and dairies, and residential, industrial, and commercial development). A decrease in water quality and gradual changes in floodplain vegetation from native riparian species to non-native species (i.e., saltcedar) could adversely affect the silvery minnow and its habitat. Silvery minnow larvae require shallow, low velocity habitats for development. Therefore, encroachment of non-native species results in less habitat available for the silvery minnow.
- Human activities that may adversely impact the silvery minnow by decreasing the amount and suitability of habitat include dewatering the river for irrigation; increased water pollution from non-point sources; habitat disturbance from recreational use, and suburban development.

CONCLUSION

After reviewing the current status of the silvery minnow and its designated critical habitat, the environmental baseline for the action area, the effects of the proposed action, and cumulative effects, it is the Service's biological opinion that the Perennial Outfalls Project, as proposed in the June 2007, Biological Assessment is not likely to jeopardize the continued existence of the silvery minnow or result in long-term adverse modification of designated critical habitat. The Perennial Outfalls Project will create adverse effects to silvery minnow, which are assumed to be present in the main channel construction zone, through the use of heavy equipment along the bankline and placement of fill material in the wetted channel of the Rio Grande. Also during construction, up to approximately 3 acres of designated critical habitat will be unsuitable and unusable for silvery minnow. The Perennial Outfalls Project, may, though not intended, create adverse effects to silvery minnow in pools formed during this project and/or adversely modify up to 3 acres of designated critical habitat.

Although the proposed action has the potential to cause temporary adverse effects to water quality for the silvery minnow during the construction phase, it is anticipated that these impacts will not affect the function or intended conservation role of designated critical habitat relative to the conservation of the silvery minnow and to the overall critical habitat designation. The implementation of the proposed action is not expected to impede the survival or recovery of the silvery minnow within Middle Rio Grande or range-wide. In fact, the proposed project is designed to create refugial habitat to benefit silvery minnow during dry conditions.

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 or 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 section 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 Reclamation so that they become binding conditions of any grant or permit issued, as appropriate, for the exemption in section 7(o)(2) to apply. The action agency has a continuing duty to regulate the activity covered by this incidental take statement. If Reclamation (1) fails to assume and implement the terms and conditions or (2) fails to require adherence to the terms and conditions of the 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, Reclamation 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(i)(3)]

Amount or Extent of Take Anticipated

The Service has developed the following incidental take statement based on the premise that the Perennial Outfalls Project will be implemented as proposed. Take is expected in the form of harm and harass during: (1) the use of heavy equipment along the bankline and in the active channel of the Rio Grande; (2) placement of fill materials directly into the wetted channel of the Rio Grande; and (3) unanticipated adverse conditions in the pools from poor water quality, disease outbreak, high levels of predation, or stranding.

The Service anticipates that take in the form of harm or harassment may affect up to 287 silvery minnow during project construction. We base this figure on the following assumptions. We assume that area of disturbance from the construction of the project is approximately three acres of wetted habitat. Currently, the average density of silvery minnow in the project area is 2.36/100 m², therefore, approximately 287 silvery minnow will be harassed by construction, fill placement in the river, and movement of equipment in the water.

The Service recognizes that the Perennial Outfalls Project is intended to be beneficial for silvery minnow; however, unanticipated conditions may occur, such as poor water quality, disease

outbreak, high levels of predation, or stranding. The Service anticipates a single adverse event that could result in mortality of up to 419 silvery minnow. We base this figure on the following assumptions. Currently, the average density of silvery minnow in the project area is 2.36/100 m². We have extrapolated the proportion of silvery minnows that use pools during river drying by relating the density of silvery minnows in the San Acacia Reach to the numbers of silvery minnows salvaged and the size of the pools from which they were rescued. We assume that the proportion of silvery minnow that use pools during drying in Isleta Reach is the same as the proportion in the San Acacia Reach. In the San Acacia Reach, from June 29 to July 4, 2007, 221 silvery minnows were rescued from a total of 32,561 m² of pools. The average density of silvery minnow in the San Acacia Reach is .678726/100 m². Therefore, the proportion of silvery minnow in the reach that are found in pools during river drying is 1.4601. If approximately the same proportion of silvery minnow in the Isleta Reach use pools during river drying, it is estimated that 419 silvery minnow could be found in the 3 acres of created wetted habitat for the Perennial Outfalls Project and are subject to take if an unanticipated event occurs. In coordination with NMESFO, any silvery minnow left in the pools without salvaging when the river dries will be counted against the anticipated take of 419 silvery minnow.

The Service notes that this number is only a best estimate of the amount of take that is likely under the proposed action. Thus, estimated incidental take may be modified from the above number should population monitoring information, data from silvery minnow rescue operations, or other research indicate substantial deviations from estimated values. In this case, further consultation, may be necessary.

Effect of the Take

The Service has determined that this level of anticipated take is not likely to result in jeopardy to the silvery minnow or destruction or adverse modification of designated critical habitat.

Reasonable and Prudent Measures

The Service believes the following Reasonable and Prudent Measures (RPMs) are necessary and appropriate to minimize impacts of incidental take of the silvery minnow due to activities associated with the proposed project.

1. Minimize take of silvery minnow due to construction.
2. Manage for the protection of water quality from activities associated with construction.
3. Minimize take of silvery minnow resulting from adverse pool conditions subsequent to construction.
4. Monitor pools to determine adverse impacts to silvery minnows or a decrease in habitat suitability.

Terms and Conditions

Compliance with the following terms and conditions must be achieved in order to be exempt from the prohibitions of section 9 of the ESA. These terms and conditions implement the Perennial Outfalls Project described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

To implement RPM 1, Reclamation shall:

- 1.1 Monitor for the presence/absence of silvery minnow in the project area prior to, during, and after construction.
- 1.2 Prior to the start of construction each day, transverse on foot the wetted portion of the path that will be used by heavy equipment to displace any minnows that may be present
- 1.3 Report findings of injured or dead silvery minnow to the Service.
- 1.4 Use information collected from Terms and Conditions 1.1 – 1.3 to develop new or modify existing BMPs to minimize the adverse effects of this project and future river maintenance projects. Any changes made to the project must be made in coordination with the Service to determine if reinitiation of consultation is required.

To implement RPM 2, Reclamation shall:

- 2.1 Avoid the wetted channel of the river with heavy equipment during high flows.
- 2.2 Monitor water quality, including turbidity and dissolved oxygen before, during, and after equipment operates in the river channel.
- 2.3 Use information collected from Term and Condition 2.2 to develop new or modify existing BMPs to minimize the adverse effects of this project and future projects in the wetted channel. Any changes made to the project must be made in coordination with the Service to determine if reinitiation of consultation is required.

To implement RPM 3, Reclamation shall:

- 3.1 Monitor presence/absence of piscivores in newly created habitats and report monitoring results to the Service annually.
- 3.2 Coordinate with the Service if monitoring results from this or other projects indicate poor water quality, potential for stranding, high levels of predation, stress, or disease in pools created from the Perennial Outfalls Project.
- 3.3 Use information collected from Term and Condition 3.1 to develop new or modify existing BMPs to minimize the adverse effects of this project and future projects in the wetted channel. Any changes made to the project must be made in coordination with the Service to determine if reinitiation of consultation is required.

To implement RPM 4, Reclamation shall:

- 4.1 Monitor the condition of each pool determine habitat quality is not reduced, temperature is within the range of greater than 1° C(35° F) and less than 30° (85° F) and there is not decreased dissolved oxygen.
- 4.2 Coordinate with other ongoing projects that are monitoring the pools.
- 4.3 Determine if there has been a decrease in habitat suitability or value; if so, coordinate with the Service, and if necessary, remove the structures.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the ESA directs Federal agencies to utilize their authorities to further the purposes of the ESA 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 Service recommends the following conservation activities:

1. Encourage adaptive management of flows and conservation of water to benefit listed species.
2. Work to further conduct habitat/ecosystem restoration projects in the Middle Rio Grande to benefit the silvery minnow.
3. Continue to use bio-engineering methods whenever possible in conjunction with river maintenance projects.

RE-INITIATION NOTICE

This concludes formal consultation on the action(s) described in the January 7, 2007 biological assessment. As provided in 50 CFR § 402.16, re-initiation 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 designated critical habitat in a manner or to an extent not considered in this biological opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or designated critical habitat not considered in this biological opinion (4) adaptive management that includes additional earth work is needed to repair or maintain the project after the initial construction phase; or (5) 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 re-initiation.

In future correspondence on this project, please refer to consultation number 22420-2007-F-0021. If you have any questions or would like to discuss any part of this biological opinion, please contact Michelle Cummer of my staff at (505) 761-4715.


Wally Murphy

cc:

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