

**ENVIRONMENTAL ACTION STATEMENT SCREENING FORM
FOR SAFE HARBOR AGREEMENTS**

I. Project Information

A. Project name:

Safe Harbor Agreement with the Bishop Paiute Tribe for Owens pupfish (*Cyprinodon radiosus*), Inyo County, California.

The proposed Safe Harbor Agreement (Agreement) is between the U.S. Fish and Wildlife Service (Service) and the Bishop Paiute Tribe (Tribe) for lands held in trust for the Tribe by the United States (Tribal Trust Lands) in Inyo County, California. The Service and Tribe are collectively referred to as the “Parties,” and singularly as “Party,” for the purposes of this document.

B. Affected species:

The Agreement covers the federally endangered Owens pupfish (*Cyprinodon radiosus*); also referred to as the “Covered Species.”

C. Project size (in acres):

The Bishop Paiute Reservation (Reservation) is approximately 875 acres. The site where the translocation and restoration activities would occur is in the 24.8-acre Conservation Open Space Area (COSA) within the Reservation. The current area of suitable habitat for Owens pupfish in the COSA is approximately 0.09 acre.

D. Brief project description including conservation elements of the plan:

The purpose of the Agreement is to promote the conservation and recovery of the federally endangered Owens pupfish through the translocation and establishment of the species within its suitable habitat at the COSA. The property subject to the Agreement (Enrolled Property) is Tribal Trust Land and located adjacent to and west of the City of Bishop in Inyo County, California. The Enrolled Property is the Reservation. The Tribe would manage a portion of the COSA for Owens pupfish and its habitat. Translocation of the Owens pupfish into the suitable habitat at the Enrolled Property would be conducted according to Service guidelines.

Historically, Owens pupfish were widely distributed and abundant along the Owens River, occurring in clear waters of springs, sloughs, marshes, irrigation ditches, and flooded pastures from Fish Slough in Mono County and possibly as far south as the Owens River delta in Owens Lake in Inyo County. By the early 1930s, the Owens pupfish had become scarce throughout its historical range. By 1942, the Owens pupfish was believed to be extinct; however, in July of 1964, the Owens pupfish was rediscovered in Fish Slough. Currently, there are only three

populations of Owens pupfish: the population at Fish Slough, consisting of three sub-populations; the population at Mule Spring; and the population at Well 368. The latter two are located in Inyo County.

In coordination with the California Department of Fish and Wildlife (formerly the Department of Fish and Game), the Tribe identified the COSA as a potential native fish refuge in 2002. The Tribe applied for and received funding from the Bureau of Reclamation, Southern California Office, to evaluate the potential of the area for the creation of a native fish refuge and to repair the subsurface drainage system at the COSA. The funded project consists of a phased approach of repairing and installing water lines, designing and constructing ponds for native fish, installing interpretative signs and kiosks, and constructing up to 3,000 feet of walking trails to connect the site with the Tribal cultural center and off-Reservation public schools. Upon completion, sufficient water will be available to establish native fish populations and conduct additional habitat and vegetation restoration for native species.

The Enrolled Property occurs within the historic range of the Owens pupfish. Suitable habitat for Owens pupfish at the Enrolled Property consists of the aquatic habitat within Pond 1. Pond 1 has been specifically created for the translocation and establishment of Owens pupfish. Threesquare bulrush (*Schoenoplectus americanus*) and beaked spike rush (*Eleocharis rostellata*) were planted around the pond to prevent invasion from other non-desirable vegetation. Pond 1 contains a deep-water moat to prevent encroachment of emergent vegetation and shallow areas which will help maintain the warm water temperatures to which Owens pupfish are well adapted. Water quality of Pond 1 has been tested using standardized procedures and meets the requirements to support a viable Owens pupfish population. The area of Pond 1 is approximately 0.09 acre (4,000 square feet).

The Tribe plans to create another pond for Owens pupfish, Pond 2. Pond 2 would be constructed incorporating similar design specification, size, and habitat requirements as Pond 1. The area of Pond 2 is anticipated to be 0.11 acre (5,000 square feet).

A third pond, Pond 3, has been created at the COSA that provides habitat for other species of native fish, including the Owens speckled dace (*Rhinichthys osculus ssp.*) and Owens sucker (*Catostomus fumeiventris*). The Tribe has future plans to create a fourth pond, Pond 4, at the COSA, which is also intended to provide habitat for the native fish species that reside in Pond 3. Pond 4 would be created in the future when the Tribe has the funding and resources needed for its creation. These ponds are reserved for other species of native fish, and Owens pupfish will not be translocated into Pond 3 or the future Pond 4.

Multiple strategies have been implemented and additional strategies are under development to prevent Owens pupfish from entering into and colonizing Pond 3 or Pond 4, and to prevent other species from entering any pond occupied by Owens pupfish. Further, these strategies will prevent Owens pupfish from escaping off of Tribal Trust Lands.

Water to supply the ponds is delivered to a subsurface point approximately 500 feet into the western edge of the COSA through a 10-inch diameter plastic drainage pipeline containing groundwater. In the COSA, the pipeline extends through the area almost to the eastern exterior boundary of the Reservation where it daylight into the Giraud Ditch. The portion of the pipeline within the COSA is referred to as the “bypass line,” so named because it bypasses the ponds while providing each of them with a source of water. A backup water line of similar composition has been installed parallel to this drainage pipeline and connects to the bypass line at the same subsurface point, which provides a conduit for water to the project that can be used to provide water for the ponds in the event of an unexpected loss of water. The water source for the backup water line is from irrigation water that originates in Bishop Creek, per Tribal water rights.

The design of the ponds, drainage system, water conveyance, and water supply is such that Owens pupfish are prevented from escaping off of Tribal Trust Lands and into Giraud Ditch. Additionally, the design of the ponds, drainage system, water conveyance, and water supply is such that fish species from the Giraud Ditch, Pond 3, and Pond 4 would have no hydrological connection to Pond 1 or Pond 2 and would not be unable to enter either Pond 1 or Pond 2.

The planning, design, and construction of these four ponds have been addressed in the documents associated with the Tribe’s application for funding to Bureau of Reclamation, Southern California Office. The Tribe has completed the required Federal and Tribal compliance associated with the creation of these ponds and the repair of the subsurface drainage system at the COSA.

The pre-Agreement conditions (Baseline) at the Enrolled Property were determined by the Parties. Baseline conditions are defined in the Service’s Safe Harbor Agreement policy (64 FR 32717) as population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the safe harbor agreement is executed between the Service and the property owner. The Baseline conditions must reflect the known biological and habitat characteristics of the Enrolled Property. Under the Agreement we have established a partial elevated Baseline to further promote the conservation and recovery of the Owens pupfish. Elevated Baseline conditions consist of setting the Baseline for an enrolled property at an increase in individuals within the population of a species and/or an increase in the amount of a species’ habitat from those conditions at the enrolled property when the safe harbor agreement is executed between the Service and the property owner. In this case, we have established an elevated Baseline for the population of the species within the COSA.

The Agreement has been established to aid in reaching the recovery objective for the Owens pupfish, as identified in its recovery plan (Service 1998). There are three criteria that have been identified to measure the degree to which the recovery objective has been achieved, each of which corresponds to an ascending level of conservation of the species and its eventual recovery: preventing extinction; downlisting; and delisting. Each of these levels of recovery require that the number of Owens pupfish populations within its historic range is greater than or equal to the

current amount - three (3) populations are currently in existence. Additionally, the level of recovery that corresponds with both downlisting and delisting requires that the populations are self-sustaining for 5 and 7 years, respectively. Translocation of the species through a safe harbor agreement and the establishment of an elevated baseline for its presence at the site would contribute toward its recovery. The Parties have negotiated an elevated Baseline at the Enrolled Property that will consist of a population of Owens pupfish being present at the COSA, where there currently is no population of Owens pupfish.

The Tribe understands the valuable contribution toward recovery that the translocation and establishment of the Owens pupfish on its lands would provide to the species. Therefore, the Tribe would like to contribute to the recovery of the Owens pupfish by creating an additional population of the species at the Enrolled Property and by establishing an elevated Baseline for the species. The Parties have worked in partnership to establish the following Baseline conditions at the Enrolled Property. The Baseline conditions for the Owens pupfish at the Enrolled Property will contain two components: (1) the current area of suitable habitat for the Owens pupfish at the Enrolled Property; and (2) an elevated presence of the Owens pupfish at the Enrolled Property. The elevated Baseline has been established with the intent to create and maintain a self-sustaining population of the Owens pupfish at the Enrolled Property. The Parties have agreed to set the Baseline conditions for the Owens pupfish at the Enrolled Property as follows.

1. The Enrolled Property contains 0.09 acre of suitable habitat for the Owens pupfish in Pond 1. The Baseline area for the Enrolled Property is the 0.09-acre area of suitable habitat for the Owens pupfish.
2. The elevated Baseline for the Owens pupfish at the Enrolled Property will be achieved when its suitable habitat is occupied by a self-sustaining population (as defined in Part 4 of the Agreement) of the species. Once the goal of a self-sustaining population of Owens pupfish is reached, the population of Owens pupfish at the Enrolled Property will not be reduced intentionally to a condition that is not self-sustaining. The determination that the elevated Baseline has been reached would be made jointly by the Parties.

Initially, the elevated Baseline conditions for the presence of the species will apply to Pond 1. Upon the completion of Pond 2 and a determination by the Parties that it is suitable for the survival and reproduction of the Owens pupfish, the species will be translocated into Pond 2. At that time, either Pond 1 or Pond 2, or both will be occupied by a population of Owens pupfish.

Provided that the Baseline conditions are maintained and a self-sustaining population of Owens pupfish is present at the Enrolled Property, either Pond 1 or Pond 2 may be designated by the Tribe as the pond that they will maintain at the elevated Baseline conditions. Under these circumstances, the Tribe will not be required to simultaneously maintain a population of Owens pupfish in both ponds to comply with the elevated Baseline conditions for species presence. The Tribe will coordinate with the Service

prior to any changes in its designation of the location of suitable habitat where Owens pupfish will be maintained, Pond 1 or Pond 2, and prior to any changes that may alter the status and location of the Owens pupfish population.

The Beneficial Management Activities in the Agreement have been developed to support the conservation and recovery of the Owens pupfish. These activities would be beneficial to Owens pupfish because they are intended to establish an additional self-sustaining population of the Owens pupfish, maintain habitat for Owens pupfish, and implement other activities that would be beneficial to the conservation and recovery of the Owens pupfish. The Other Management Activities under the Agreement are activities associated with the continued use of the Enrolled Property for cultural activities, ongoing activities, and activities associated with maintenance and the management of the COSA for other purposes and activities not specific to conservation and recovery of the Owens pupfish; provided these activities would not reduce the ability of the Tribe to maintain the established Baseline conditions.

Under the Agreement, the Tribe will conduct translocation and associated activities to establish a self-sustaining population of the Owens pupfish, make habitat available to the Owens pupfish, and will maintain and manage the Owens pupfish and its habitat for a period of 10 years. Additional activities under the Agreement include monitoring the population of Owens pupfish, habitat maintenance, and implementing actions to control and reduce threats (i.e., habitat encroachment by emergent vegetation such as cattails, and predation by non-native predators). The net conservation benefit is expected to be achieved by establishing a self-sustaining population of the Owens pupfish and maintaining its habitat on the Enrolled Property.

The Tribe will notify the Service at least 60 days in advance of any planned activity that the Tribe reasonably anticipates will result in take of any individual of the Owens pupfish on the Enrolled Property, including a return of the Enrolled Property to the established Baseline. The Tribe will coordinate with the Service to capture and relocate any individuals that could potentially be affected.

The Tribe will notify the Service 60 days prior to the transfer of ownership so that the Service can attempt to contact the new owner, explain the Baseline responsibilities applicable to the Enrolled Property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit Owens pupfish on the Enrolled Property.

The Tribe will conduct surveys for Owens pupfish according to a species monitoring plan that will be developed by the Parties. The results of these surveys, including whether any Owens pupfish were observed, and the species of all fish detected, will be reported to the Service.

The Tribe will provide the Service with an annual report, due November 1 of each year for the prior calendar year. The report will describe any translocation activities, any habitat restoration activities, any substantial change in condition of the Owens pupfish population and/or its habitat that occurred during the previous year, any observations of the Owens pupfish by the Tribe during the previous year, and any incidental take of Owens pupfish that has occurred.

II. Does the Safe Harbor Agreement fit the criteria as described in the Safe Harbor Agreement policy (meet the standard of “net conservation benefit” and contribute to recovery)?

In accordance with the Service’s Safe Harbor Agreement policy (64 Federal Register 32717), “net conservation benefit” means “the cumulative benefits of the management activities identified in a Safe Harbor Agreement that provide for an increase in a species’ population and/or the enhancement, restoration, or maintenance of covered species’ suitable habitat within the Enrolled Property, taking into account the length of the Agreement and any off-setting adverse effects attributable to the incidental taking allowed by the enhancement of survival permit. Net conservation benefits must be sufficient to contribute, either directly or indirectly, to the recovery of the covered species.”

The creation and maintenance of small, often intensively managed, populations of Owens pupfish have prevented its extinction. The Owens pupfish is a species that is short-lived and currently survives in only three small, isolated populations. Species under such circumstances are vulnerable to extinction as a result of stochastic (i.e., random) threats. The translocation and establishment of additional populations of Owens pupfish reduces the potential of extinction from stochastic events. The goal of establishing a self-sustaining population of Owens pupfish at the Enrolled Property would contribute to the recovery of the species by establishing the fourth population of the species. In addition, translocating and establishing Owens pupfish to the Enrolled Property presents an opportunity to create the most genetically diverse contemporary population of Owens pupfish, and reduce the effects that habitat fragmentation of associated genetic isolation have had on the species by including individuals from each of the currently isolated populations into the new population at the COSA.

The destruction and loss of habitat and negative effects from non-native species continue to threaten the survival and recovery of the Owens pupfish. Activities associated with the Agreement would include the translocation of Owens pupfish to establish a self-sustaining population of the species at the Enrolled Property, and the maintenance, enhancement, and restoration habitat for the species. The implementation of these activities would be highly beneficial to the Owens pupfish. The Tribe will carry out activities, as identified in Part 5 of the Agreement, to benefit the Owens pupfish within the Enrolled Property.

The Beneficial Management Activities described in Part 5 of the Agreement have been developed to support the conservation and recovery of the Owens pupfish. The translocation of the Owens pupfish to establish a self-sustaining population of the species in suitable habitat and the maintenance of suitable habitat are recovery actions for the Owens pupfish as identified in its recovery plan (Service 1998). Therefore, management activities associated with the Agreement would benefit the Owens pupfish by contributing to its conservation and recovery. The Service anticipates that implementation of these management activities will produce a net conservation benefit to the Owens pupfish by:

- Establishing a population of the Owens pupfish at the Enrolled Property.
- Providing areas where existing suitable habitat for the Owens pupfish will be maintained and increased in quantity and quality.
- Providing areas where suitable habitat for the Owens pupfish will remain relatively undisturbed.

Under the Agreement, the Tribe will make habitat available to the Owens pupfish, will conduct translocation and associated activities to establish a self-sustaining population of the Owens pupfish, and will maintain and manage the Owens pupfish and its habitat for a period of 10 years.

A. Are the effects of the Safe Harbor Agreement less than significant on the rangewide population of federally listed, proposed, or candidate species or other wildlife and their habitats covered under the Safe Harbor Agreement?

Yes. There will be positive, beneficial effects to the affected species due to implementation of conservation measures in the Agreement.

B. Are the effects of the Safe Harbor Agreement minor or negligible on other environmental values or resources (e.g., air quality, geology and soils, water quality and quantity, socio-economic, cultural resources, recreation, visual resources, etc.)?

Yes. Changes in air quality, geology and soils, water quality and quantity, socio-economic resources, recreation, and visual resources are expected to be negligible as a result of the Agreement. There are two recorded cultural resources on the Enrolled Property (a historic standpipe and a historic masonry stone structure in ruins); however, the Agreement would not cover any new activities, including any ground disturbing activities, at any of these sites.

C. Would the impacts of this Safe Harbor Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects not result, over time, in cumulative effects to environmental values or resources which would be considered significant?

Yes. There are no significant cumulative effects expected to occur as a result of approval of the Agreement and issuance of the enhancement of survival permit. A beneficial effect to natural resources is expected to occur as a result of approval of the Agreement and issuance of the enhancement of survival permit.

III. Do any of the exceptions to categorical exclusions apply to this Safe Harbor Agreement (from 516 DM 2.3, Appendix 2)?

None of the exceptions to categorical exclusions apply to the Agreement.

Would implementation of the Safe Harbor Agreement:

A. Have significant adverse effects on public health or safety?

No. Implementation of the Agreement is not likely to result in impacts to public health or safety.

B. Have adverse effects on such unique geographic characteristics as historic or cultural resources, park, recreation or refuge lands, wilderness areas, wild or scenic rivers, sole or principal drinking water aquifers, prime farmlands, wetlands, floodplains, or ecologically significant or critical areas, including those listed on the Department's National Register of Natural Landmarks?

No. There are no registered National Landmarks, wilderness areas, wild or scenic rivers, or sole or principle drinking water aquifers on or near the Enrolled Property. The project will not adversely affect parks, historic or cultural resources, wetlands, floodplains, or ecologically significant or critical areas. Implementation of the Agreement will enhance conservation efforts on the Enrolled Property. Therefore, no adverse effects are anticipated associated with the Agreement.

C. Have highly controversial environmental effects?

No. Given the negligible impacts to all resources there is no scientific controversy over environmental effects.

D. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks?

No. The proposed management activities are expected to result in beneficial effects to the Covered Species. Therefore, approval of the Agreement would not have highly uncertain or potentially significant environmental effects or involve unique or unknown environmental risks.

E. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects?

No. Future actions would be reviewed on their own merits in meeting requirements under the Federal Endangered Species Act, its implementing regulations, and other laws. Effects from approval of the Agreement are minor or negligible; therefore, approval of the Agreement would not represent a decision in principle about future actions with potentially significant environmental effects.

F. Be directly related to other actions with individually insignificant but cumulatively significant environmental effects?

No. Approval and implementation of the Agreement is not directly related to other actions with significant cumulative environmental effects.

G. Have adverse effects on properties listed or eligible for listing on the National Register of Historic Places?

No. There are no properties listed or eligible for listing on the National Register of Historic Places known to occur on the Enrolled Property.

H. Have adverse effects on listed or proposed species, or have adverse effects on designated Critical Habitat for these species?

No. Owens pupfish would be translocated in limited numbers from the existing populations. The number of individuals from any population would be small (30 or less) and would not have any adverse effects on an existing population.

Under the approved Agreement and enhancement of survival permit, incidental take of Owens pupfish may occur as a result of: implementing the management activities identified in Part 5 of the Agreement; carrying out any other lawful activity that may cause the incidental taking of such species on the Enrolled Property after initiation of and consistent with such management activities, provided that such taking does not reduce the amount of habitat below the amount specified in the Baseline conditions or reduce the population of Owens pupfish below the elevated Baseline; and returning to Baseline conditions.

The Service determined that the anticipated level of take is not likely to result in jeopardy to the Owens pupfish. There is no designated critical habitat for Owens pupfish.

I. Have adverse effects on wetlands, floodplains or be considered a water development project thus requiring compliance with either Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act?

No. Approval and implementation of the Agreement will not negatively affect wetlands or floodplains; therefore, compliance with these orders and the Fish and Wildlife Coordination Act are not required.

J. Threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment?

No. Approval of the Agreement will be in accordance with all applicable laws. One specific condition of the enhancement of survival permit will be that it be carried out in accordance with all applicable Federal, State, Tribal, or local laws.

IV. ENVIRONMENTAL ACTION STATEMENT

Based on the analysis above, the Safe Harbor Agreement with the Bishop Paiute Tribe for Owens pupfish (*Cyprinodon radiosus*), Inyo County, California meets the qualifications for a Safe Harbor Agreement whose implementation represents a class of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this action is categorically excluded from further NEPA documentation as provided by 516 DM 2, Appendix 1, and 516 DM 8.

Other supporting documents (list): Safe Harbor Agreement

Concurrence:

Field Supervisor, Ventura Fish and Wildlife Office

Date

LITERATURE CITED

U.S. Fish and Wildlife Service. 1998. Owens Basin Wetland and Aquatic Species Recovery Plan, Inyo and Mono Counties, California. Portland, Oregon 143 pages + appendices.

DRAFT