

**San Joaquin River Restoration Program
Restoration Administrator
2009 Annual Report**



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San Joaquin River Restoration Program Settling Parties

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TABLE OF CONTENTS

Section	Page
1.0 Introduction and Overview	1
1.1 Introduction	1
1.2 Phased Implementation of the Settlement	2
1.3 Report Overview	2
2.0 2009 SJRRP Activities and Assessment of Progress	4
2.1 2009 SJRRP Activities	4
2.2 2009 SJRRP Settlement Milestones and SJRRP Goals	4
2.3 Assessment of SJRRP Progress during 2009	4
2.4 Congressional Action	8
2.5 Impediments to Achieving SJRRP Goals	8
3.0 Recommended 2010 SJRRP Goals and Expected Challenges	13
3.1 Recommended Goals	13
3.2 Expected Challenges	14
4.0 RA and TAC Activities and Assessment of Progress	16
4.1 Settlement Provisions Relating to the Roles of the RA and TAC	16
4.2 TAC Activities	17
4.3 RA Goals and Activities	19
4.4 Assessment of RA and TAC Performance	22
4.5 Impediments to the Ability of the RA to Assist the Secretary	24
5.0 2010 RA Goals	29
6.0 Additional Measures Recommended to Achieve the Restoration Goal	30
6.1 Address the Effects Existing Conveyance Capacity Limits in Reach 3	30
6.2 Study the Reoperation of the Chowchilla Bifurcation Structure	30
7.0 TAC and RA Expenditures	32

1.0 Introduction and Overview

1.1 Introduction

In 1988, a coalition of environmental groups, led by the Natural Resources Defense Council (NRDC), filed a lawsuit challenging the renewal of the long-term water service contracts between the United States and the Central Valley Project (CVP) Friant Division contractors. After more than 18 years of litigation of this lawsuit, known as *NRDC, et al., v. Kirk Rodgers, et al.*, the Parties reached agreement on terms and conditions of a settlement. On September 13, 2006, a Stipulation of Settlement (Settlement) was signed by the Settling Parties and subsequently approved by the Court on October 23, 2006. The “Settling Parties” include the NRDC, Friant Water Users Authority (FWUA), and the U.S. Departments of the Interior and Commerce.

The San Joaquin River Restoration Program (SJRRP) created by the Settlement is a landmark effort. The SJRRP restoration area extends 153 miles downstream from Friant Dam to the confluence of the San Joaquin and Merced rivers. It is one of the largest river restoration projects of its kind in the country and is particularly complex because its purpose is to restore river flows and natural habitat capable of supporting reintroduced runs of Chinook salmon and other native fish populations. More than forty miles of the historic mainstem of the San Joaquin River has not had year round flows since the construction of Friant Dam in the mid-1940’s because the water supply and flood management infrastructure was not designed with consideration for fish migration and habitat needs.

The Secretary of the Interior (Secretary) will implement the terms and conditions of the Settlement. The Bureau of Reclamation on behalf of the Secretary took the lead in establishing the SJRRP to implement the Settlement. Now in its third year of implementation, the SJRRP is staffed by three federal agencies and two state agencies. The federal agencies are the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (USFWS) and the NOAA Fisheries Service (NOAA). The state agencies are the Department of Water Resources (DWR) and Department of Fish and Game (DFG). Collectively, these five agencies are referred to as the “Implementing Agencies” and their representatives serve on the Program Management Team (PMT) that oversees much of the implementation of the Settlement.

The Settlement establishes two primary goals: a “Restoration Goal” and a “Water Management Goal.” These goals are described below:

- Restoration Goal – The Settlement intent is to restore and maintain fish populations in “good condition” in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish.
- Water Management Goal – Similarly, the Settlement intent is to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in the Settlement.

To assist the Secretary in achieving these goals, the Settlement calls for appointing an independent Restoration Administrator (RA) and establishing a Technical Advisory Committee

(TAC) to provide consultation to the RA on technical issues. The roles and specific responsibilities for the RA and TAC are specified in the Settlement. The RA is required by Paragraph 10.c of Exhibit D in the Settlement to prepare an Annual Report that assesses progress toward implementing the Settlement during the previous calendar year. The Annual Report is to be submitted to the Settling Parties. Once the Annual Report is received and reviewed by the Settling Parties, it will be made available to the public and the Settling Parties will file a copy with the Court.

1.2 Phased Implementation of the Settlement

The PMT identified three (3) Settlement Implementation “Stages” in its 2008 SJRRP Annual Report. Each of these stages is briefly described below.

Stage 1 of the SJRRP began in earnest in 2007 and has focused on program-level “pre-flow” planning and information gathering. Stage 1 ended with the October 1, 2009, Friant Dam releases of Interim Flows.

Stage 2 of Settlement implementation began with the release of Interim Flows on October 1, 2009, will continue into 2014. It includes the following actions:

- Continuation of Interim Flow releases from Friant Dam through the end of 2013;
- Interim Flow monitoring and analyses;
- Initial re-introduction of spring-run and fall-run Chinook salmon to the San Joaquin River;
- Commencement of Restoration Flows (no later than January 1, 2014); and
- Completion of the Interim Flow Study Report by the PMT in mid-2014.

Stage 2 will end when the Interim Flow Study Report is distributed to the public.

Stage 3 will begin following commencement of Restoration Flows and involve the actions necessary to achieve full implementation of Restoration Flows and completion of SJRRP construction projects and related monitoring and management activities.

1.3 Report Overview

The RA Annual Report addresses the following topics:

- Settlement implementation activities and accomplishments of the SJRRP (those related to the SJRRP staff) during 2009, including progress toward achieving Settlement milestone actions and related Congressional or other federal activities;
- SJRRP Program, RA and TAC activities and accomplishments during 2009, including consultation with the Implementing Agencies, other state and local agencies and interest groups, and a summary of RA and TAC expenditures in support of Settlement activities;
- Impediments to progress toward achieving the Settlement Restoration Goal during 2009;

- Challenges to achieving the Restoration Goal that are expected to be encountered during 2010 and succeeding years;
- RA and TAC goals for 2010; and
- Additional RA recommended measures to achieve the Restoration Goal.

During preparation of this Annual Report the RA consulted with TAC members and federal liaison representatives.

2.0 2009 SJRRP Activities and Assessment of Progress

This section discusses SJRRP activities during 2009, including significant achievements, impediments to progress.

2.1 2009 SJRRP Activities

A discussion of some of the SJRRP activities and accomplishments during 2009 is provided in the *San Joaquin River Restoration Program (SJRRP) 2009 Annual Report (SJRRP 2009 Annual Report)*. This Report is available at www.restoresjr.net. The SJRRP Annual Report describes a broad range of technical, environmental, regulatory permitting, public outreach and consultation activities designed to contribute to achieving the Settlement's Restoration Goal and Water Management Goal. Some of these SJRRP activities involved consultation with the RA in accordance with the terms of the Settlement.

2.2 2009 SJRRP Settlement Goals

The Settlement identified two primary goals for 2009: (1) completion of the programmatic environmental compliance process by September 2009, including “. . . the necessary and appropriate NEPA, NHPA, ESA, CEQA review;” and (2) completion of the Interim Flow Monitoring Program and commencement of the Interim Flow releases from Friant Dam on October 1.

In addition, the SJRRP 2008 Annual Report (see p. 20) also identified the following tasks for completion during 2009:

- Program Alternatives Report;
- Fisheries Management Plan; and
- Water Year 2010 Interim Flows Project Environmental Assessment/Initial Study (EA/IS).

The 2010 Interim Flows Project EA/IS was included as a goal in the *2008 SJRRP Annual Report* because it became clear that the program level PEIS/R, ROD/NOD documents probably would not be completed during 2009. Without the PEIS/R and related documents, the Interim Flows could not commence during 2009 unless a “one-year” EA/IS was prepared to cover the release of Interim Flows and provide the documentation necessary to support applications to obtain the necessary regulatory permits.

The 2008 SJRRP Annual Report also identified ongoing activities where progress was expected to continue but completion of the work products is not expected during 2009. For a more complete discussion of SJRRP goals refer to the *SJRRP 2009 Annual Report*.

2.3 Assessment of SJRRP Progress during 2009

More than three years have elapsed since the Settlement was signed in September 2006 by the Settling Parties. Based on the goals identified for achievement by the Settlement and by the SJRRP PMT for 2009, this section provides an assessment of SJRRP progress during the past year. This assessment includes brief discussions of the assessment criteria, significant goals that were achieved during 2009 and other important goals that were not achieved.

2.3.1 Assessment Criteria and Overview

To assess SJRRP progress during 2009, the following significant actions identified for completion by the SJRRP during 2009 were considered:

- Completion of the environmental compliance documentation identified in Exhibit C of the Settlement;
- Initiation of the Interim Flow releases from Friant Dam in October, 2009;
- Completion of the Interim Flow Monitoring Program and installation of the monitoring wells, stream gages, and instrumentation necessary to fully implement the Monitoring Program in 2009;
- Completion of the other work products identified in the *2008 SJRRP Annual Report*; and
- Demonstration of significant progress toward achieving Settlement Milestones and identified SJRRP goals for years 2010 and after.

Although significant progress was achieved during 2009 the inability of the SJRRP to complete the primary goals/milestones identified in the Settlement contributes to the feeling that 2009 was only a partial success. The failure to achieve important 2009 goals also raises significant concerns regarding the prospect for achieving future Schedule Milestones.

2.3.2 SJRRP Goals Achieved During 2009

Paragraph 15 of the Settlement required that the Interim Flow releases begin on October 1 and continue through November 20, 2009. Although the SJRRP was not able to complete the program level environmental compliance documents, it was successful in completing a 2010 Interim Flow Program EA/IS and obtaining the regulatory permits that allowed Interim Flow



October 1, 2009 Friant Dam Interim Flow Release of 350 cfs.



November 1, 2009 Friant Dam Interim Flow Release of 700 cfs.

Program releases to commence on October 1, 2009, and continue until September 30, 2010. Commencement and completion of the Fall 2009 Interim Flow releases on October 1 was the major SJRRP accomplishment during 2009. Achieving this milestone was viewed by many as a

litmus test for the SJRRP. Accordingly, all of the SJRRP agencies and non-federal Settling Parties that contributed to this success deserve congratulations.

2.3.3 Other Major 2009 Goals that Were Not Achieved

Although the SJRRP successfully initiated Interim Flow releases on October 1 and completed the scheduled Interim Flows on November 20, 2009, the SJRRP was unable to accomplish three other equally important goals: (1) preparation of the necessary SJRRP program environmental compliance documentation that needed to be complete during 2009 in order to achieve Settlement Exhibit C Schedule Milestones; (2) completion of all components of the Interim Flow monitoring program in time to be able to fully monitor and account for management of the Interim Flow releases during October and November of 2009; and (3) completion of the Fish Management Plan that was scheduled to be available during 2009.

Program Environmental Compliance Documentation

The SJRRP did not complete the programmatic environmental compliance documents that were scheduled to be completed during 2009 pursuant to Settlement Exhibit C (the Paragraph 11 Milestone Dates). The inability to complete the program documents in 2009 will, absent efforts to mitigate environmental compliance delays experienced to date, impact the ability to achieve future SJRRP Milestones (*e.g.*, completion of major infrastructure improvements required by the Settlement) that are reliant on completion of the program environmental documentation. These impacts on SJRRP efforts are discussed below.

The Program Environmental Impact Statement/Report (PEIS/R) and related documentation provide the program environmental compliance documentation foundation necessary to demonstrate overall SJRRP consistency with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), the Federal Endangered Species Act (FESA), and the California Environmental Quality Act (CEQA). Failure to complete the PEIS/R also meant that the SJRRP could not complete the necessary Record of Decision (ROD) and Notice of Determination (NOD) during 2009 as required by NEPA and CEQA, respectively. Finally, failure to complete the above compliance documents meant that the documentation necessary to obtain the SWRCB permits for the full Interim Flow Program was not available. The implications of the inability to complete these actions are discussed below.

Because the SJRRP did not complete the PEIS/R, ROD and NOD in 2009, it was necessary to divert significant SJRRP staff and funding resources during 2009 from completion of the SJRRP program-level environmental documentation (*i.e.*, the PEIS/R) and other tasks to prepare and process a separate one-year Environmental Assessment/Interim Study (EA/IS) to accompany the SJRRP application to the State Water Resources Control Board (SWRCB) for permits to allow Interim Flow releases to begin last October. The SJRRP prepared a joint state/federal EA/IS concurrent with the ongoing PEIS/R work effort so that the SJRRP could obtain permits from the SWRCB to allow the Interim Flow releases from Friant Dam to commence October 1, 2009, and continue to September 30, 2010. That parallel work effort was successful but it affected progress on the completion of the PEIS/R document that already was behind schedule.

As of the date of this Annual Report, the Final PEIS/R, ROD and NOD were not complete. Further, the SJRRP is not likely to complete the PEIS/R prior to the expiration of the Interim Flow release SWRCB permits on September 30, 2010. Therefore, the SJRRP is now preparing a

second one-year state/federal EA/IS and it will prepare a second application to obtain SWRCB approvals in order to enable the Interim Flow releases to continue after September 30, 2010. As was the case in 2009, preparation of the second one-year EA/IS document and SWRCB permit application will occur concurrent with efforts to complete the PEIS/R, ROD and NOD. As was the case in 2009, preparation of these additional work products could impact efforts to complete the PEIS/R to some degree.

Unless the additional one-year EA/IS is completed and SWRCB permits are obtained by September 30, 2010, it likely will not be possible to complete the Interim Flow Program for the 2010 calendar year. Paragraph 15 of the Settlement requires that the Interim Flow releases continue through December 1, 2010, two months after the current SWRCB permits expires. If the additional one-year compliance documentation and SWRCB permit process are successfully completed prior to the end of September this year, Interim Flow releases from Friant Dam will continue through September 30, 2011.

Interim Flow Monitoring Program

Prior to commencement of Interim Flow releases from Friant Dam on October 1, 2009, the SJRRP was not able to complete implementation of the Interim Flow Monitoring Program that was needed to guide the compilation and analyses of information gathered during the Interim Flow releases. The SJRRP was not able to complete installation of the monitoring wells, stream



Checking gravel bed conditions in Reach 1.

gages and other instrumentation needed to systematically record conditions in the mainstem of the San Joaquin River and on adjacent lands potentially subject to seepage impacts related to implementation of the SJRRP Interim Flows. As a result, during October and November the SJRRP was not able to: (1) support real-time management of the Interim Flow releases; (2) adequately document the effects of the Interim Flow releases downstream of Friant Dam; and (3) perhaps most importantly, account for the volume of Interim Flows released.

Fish Management Plan

The Fish Management Plan (FMP) was scheduled to be complete in 2009. The SJRRP staff distributed a Draft FMP in June 2009 but the incomplete Draft FMP did not provide important information relating to fish habitat and management needs and an adaptive management program that could be implemented successfully.

The current lack of a completed FMP is impeding SJRRP progress toward achieving the Restoration Goal because an understanding of fish habitat and management needs and appropriate consideration of those needs is not being integrated into the ongoing project planning and design efforts related to the Reach 2B/Mendota Pool Bypass, Reach 4B/Eastside Bypass/Mariposa Bypass, and Arroyo Canal/Sack Dam projects. These major SJRRP components will encompass many of the required channel and structural improvements identified in the Settlement to provide the conveyance capacity and improved channel habitat conditions necessary to support successful reintroduction of Chinook salmon and achievement of the Restoration Goal.

In the absence of the information that should have been provided in a completed FMP, planning for these required channel and structural improvement projects is continuing with an emphasis on water conveyance and fish passage needs, rather than emphasizing in an equal manner important information on the habitat and management needs of the Chinook salmon and other fish and aquatic species that rely on a healthy riverine ecosystem. It is imperative that the FMP be completed as soon as possible so that a balanced and thorough consideration of the needs of fish can be incorporated in a timely manner into the planning and design process for Paragraph 11 project improvements.

2.4 Congressional Action

In March, Congress approved Omnibus Public Land Management Act of 2009, which included the San Joaquin River Restoration Settlement Act (SJRRS Act, Sections 10000, *et. seq.*). President Obama signed the Omnibus Bill on March 30, 2009 (Public Law 111-11). The SJRRS Act authorizes and directs the Secretary of the Interior to fully implement the Act and provides essential federal funding authorization and identifies specific terms and provisions relating to implementation of the SJRRP. While this was not a SJRRP achievement, it was an extremely important Milestone for the SJRRP and reflected intensive and coordinated efforts on the part of the Settling Parties and downstream stakeholders.

2.5 Impediments to Achieving SJRRP Goals

The initial startup phase of a large and complex project rarely proceeds without delays and the need address unforeseen circumstances. More than three years have elapsed since the signing of the Settlement in September 2006. Major SJRRP goals were not achieved during 2009 and a combination of factors contributed to limiting SJRRP progress. Some of these impediments to progress were external to and beyond the control of the SJRRP.

2.5.1 External Impediments that the SJRRP Could Not Control

At least three impediments to SJRRP progress were beyond the control of the SJRRP. Each is discussed briefly.

Aggressive Settlement Milestone Date for Completion of the Program Environmental Compliance Documents

The Settling Parties agreed upon a set of Settlement milestone dates that established 2009 as the year when the SJRRP would complete the programmatic-level environmental compliance documents. This was an aggressive Milestone date that recognized the importance of completing the program-level environmental compliance documents as the necessary regulatory foundation that would enable timely implementation of the overall SJRRP. The Settling Parties wanted to expedite implementation of the SJRRP in order to minimize future delays that could increase the expense of implementing the SJRRP and/or potentially erode support for the SJRRP among key stakeholders. However, adopting an aggressive schedule increased the potential that the SJRRP would not be able to complete the program-level compliance documents in 2009 as required by the Settlement. This potential inability to achieve the 2009 milestone became a reality. The program environmental documents were not completed in 2009 and they likely will not be completed until the end of 2010 or early in 2011.

Delay in Congressional Passage of Authorizing Legislation

It required about 2.5 years following Settling Party signing of the Settlement in September of 2006 before Congress would pass legislation in March 2009 that authorized and provided sustained funding sources for the SJRRP. The Settlement assumed that Congressional authorization and funding would be achieved by the end of 2006, just a few months following signing of the Settlement.

The delay in Congressional action did not directly impede SJRRP progress; authority already existed under the Central Valley Project Improvement Act (CVPIA) to carry out planning and permitting and adequate funds were available to support the initial SJRRP efforts. However, the Congressional delay did indirectly impede implementation of the SJRRP because, until local landowners and agencies were sure that Congress would provide formal authorization and funding, many were unwilling to fully cooperate with the SJRRP. Many local landowners and interests waited until Congressional authorization had been secured and the President had signed the bill. As a result, the SJRRP was unable to obtain Temporary Entry Permits (TEP) from many downstream landowners and other agreements needed with local agencies and water managers were more difficult to obtain and were delayed.

Effects of the State Budget Crisis

The state budget crisis impacted the availability of timely funding for some agency activities. The state budget crisis, in combination with the delay in Congressional authorization, also may have contributed to additional uncertainty among local agencies and landowners whose cooperation was needed to implement various elements of the SJRRP but who were concerned about whether the SJRRP was going to receive state and federal support. Until some local interests were certain that the SJRRP would receive Congressional support and state funding, it appears that many interests were inclined to adopt a “wait and see” approach to participation in the SJRRP.

2.5.2 Internal Factors Affecting SJRRP Progress During 2009

Several other impediments to implementing the Settlement were encountered during the past year by the SJRRP and these impediments affected implementation of the first year of Interim Flow releases.

Failure to Meet Fall Interim Flow Targets at Gravelly Ford

The Settlement required commencement of Friant Dam Interim Flow releases on October 1 and continuation of the releases through November 20, 2009. Between October 1 and October 31 the Interim Flow releases were maintained at 350 cfs. On November 1 through 10, the releases were increased to 700 cfs and then returned to 350 cfs between November 11 and 20. These release flow rates were achieved consistent with Paragraph 15(a) of the Settlement; however, the target flows cited in Exhibit B of the Settlement were not met.



River Gage Station at Gravelly Ford – Fresno County Side **Gravelly Ford - Madera County Side**

Because management of Interim Flow releases differs significantly from pre-Settlement water management procedures the Interim Flows are considered experimental. The Interim Flow releases are designed to optimize collection and analysis of flow data during the period leading to commencement of Restoration Flows, which are required to commence no later than January 1, 2014. An important measure of Interim Flow Program performance is whether the flow rates at select downstream “target” locations identified in the Settlement are achieved. The ability to achieve downstream target flows and refine the information and understanding of river conditions is necessary to successfully implement the Settlement.

The first important downstream Interim Flow target location is Gravelly Ford, about 40 miles below Friant Dam. The Settlement assumes that, of a 350 cubic feet per second (cfs) release from Friant Dam, 155 cfs would be lost to seepage or to satisfy riparian diversions, thereby achieving a net target flow of 195 cfs at Gravelly Ford. Similarly, a 700 cfs release from Friant Dam is assumed to achieve a target flow of 595 cfs at Gravelly Ford during the 2009 Fall Flow releases. Neither of these two Gravelly Ford target flow rates were achieved.

The Settlement requires a schedule of releases from Friant Dam and it also requires that downstream target flows be achieved for five specified locations along the San Joaquin River (*i.e.*, at Gravelly Ford, below the Chowchilla Bifurcation Structure, below Sack Dam, the top of Reach 4B and the confluence with the Merced River). The Gravelly Ford target flows were not achieved during the October 1 through November 20, 2009, Interim Flows. The October and November Interim Flow releases covered only a short time period and should not be used to predict conditions downstream of Gravelly Ford in future years. However, for future water years when the Interim Flows or Restoration Flows are implemented throughout the year, the inability to achieve the designated target flow at Gravelly Ford likely would preclude the ability to achieve target flows at the designated target locations further downstream. Under such conditions progress toward achieving the Restoration Goal likely would be impeded.

Inadequate Interim Flow Management at Mendota Pool

Interim Flows reaching the Mendota Pool were not effectively managed or accounted for during Fall 2009 because the SJRRP staff was not able to reach agreement(s) with the Pool operators on procedures for monitoring/managing the Interim Flows. The failure to reach agreements with the Pool operators impacted the ability of the SJRRP to document compliance with SWRCB Section 1707 Permit Conditions and resulted in inadequate accounting for Fall Interim Flow releases entering and continuing downstream of the Mendota Pool.



San Joaquin River below the Mendota Pool Dam (left) and view of Mendota Pool upstream of the Dam (right)

The ability to accurately account for Interim Flow releases as they flow downstream is essential to the long-term success of the SJRRP, both in terms of achieving the Restoration Goal and Water Management Goal. All parties to the Settlement need to understand whether water released from Friant Dam is being managed consistent with the terms of the Settlement. During the Fall Interim Flow releases (October 1 through November 20), the SJRRP accounting procedures demonstrated that Interim Flows were impounded and diverted, contrary to the terms of the Settlement (refer to the 2009 SJRRP Annual Technical Report at www.restoresjr.net).

Effectiveness of the PMT Approach to Consultation with the RA

Considerable effort was directed during 2009 by the PMT, Settling Parties and the RA to resolve different interpretation relating to PMT responsibility to provide timely consultation with the RA in accordance with the Settlement. These discussions involved Settlement language in

paragraphs, 8, 9, 11, 12, 13, 15 and Exhibit B. The differences in interpretation were partially resolved by modifying the Consultation Agreement that was completed in 2008 to address the ability of the RA to have broader participation in PMT working group meetings and Project Team meetings during implementation of the Settlement. The RA and SJRRP Program Manager (PM) agreed on modifications to prior practices that were more limiting in terms of RA participation in PMT efforts. These changes in the Consultation Agreement will be implemented for a period of time to determine whether the changes adequately address the concerns expressed by the RA and non-federal Settling Parties. The consultation approach may be revisited in 2010 if the Settling Parties and RA believe that consultation between the PMT and RA continues to be a significant issue.

3.0 Recommended 2010 SJRRP Goals and Expected Challenges

3.1 Recommended 2010 SJRRP Goals

The *2009 SJRRP Annual Report* reviews the range of SJRRP activities expected to occur during 2009. Exhibit C of the Settlement does not identify specific environmental compliance or other Milestones for 2010 because it was assumed that the program level environmental compliance documents would be completed during 2009. However, Paragraph 14(a) of the Settlement requires that a completed permit application to NOAA Fisheries for the reintroduction of spring run Chinook salmon be prepared as soon as practical but in no case later than September 30, 2010. This section identifies the priorities tasks/goals that must be completed during 2010 in order to maintain progress toward implementing the Settlement and achieving the Restoration Goal.

3.1.1 Complete Important Unfinished Work Products that Were Due in 2009

The first-order goals recommended for the SJRRP during 2010 involve completion of several unfinished work products called out in the Settlement and discussed in Section 2.3 of this Report. Highest priority during 2010 should be assigned to completing the following work products:

- Program Environmental Compliance Documents, including the
 - Final Program Environmental Impact Statement/Report (PEIS/R); and
 - Final PEIS/R Record of Decision/Notice of Determination (ROD/NOD);
- Fisheries Management Plan; and
- 2010 Interim Flows Monitoring Program.

In addition, completion of the following work products should be expedited by the SJRRP staff.

3.1.2 Complete a One-year Environmental Compliance Document and Obtain Necessary Permits for Interim Flow Releases Needed to Continue Interim Flow Releases on October 1, 2010

Because the Final PEIS/R, ROD AND NOD are not expected to be finished in time to provide coverage for continuation of the Interim Flow releases after September 30, 2010, the SJRRP will need to prepare an EA/IS and permit application for submittal to SWRCB to enable Interim Flow releases to continue starting October 1 of this year and continue to September 30, 2011. This effort will divert SJRRP resources from completing the program-level documentation; however, it is imperative that the necessary documentation be completed and that the SWRCB permits be obtained in time to maintain the ability to continue to release Interim Flows from Friant Dam after September 30, 2010, consistent with Paragraph 15(b) of the Settlement.

3.1.3 Formulate a Coherent SJRRP State/Federal Funding Strategy

The SJRRP needs to formulate a coherent state/federal joint funding strategy during 2010 that will be capable of addressing foreseeable SJRRP funding needs. The SJRRP also needs to request funding for outgoing years in a timely manner. Funding that will be needed in 2011 was

not requested and it is particularly important to assure that adequate funds are available for Phase I construction project expenses (see Settlement Paragraph 11) that are projected to peak during FY 2013 and FY 2014 so that these Phase I projects can proceed without unnecessary delays due to lack of funding. It is important to complete a funding strategy as soon as possible so that funding requests can be processed at the state and federal levels in a timely manner; that is, having funding proposals on hand and included for consideration in Washington, D. C. and Sacramento at the beginning of the annual budget cycles for outgoing years.

3.1.4 Identify Strategies for Re-introducing Salmon to the San Joaquin River and Submit the Section 10(a)(1)(a) Permit Application to NOAA Fisheries by September 30, 2010, for the Reintroduction of Spring Run Chinook Salmon

Discussions during 2009 among the fisheries agencies, the PMT and RA/TAC demonstrated that there is a need for progress in identifying alternative strategies for assuring that salmon can be introduced to the San Joaquin River consistent with the Settlement Milestone (by December 31, 2012). Identification of strategy alternatives and selection of a preferred reintroduction strategy is needed for the Section 10(a)(1)(a) Permit Application that must be submitted to NOAA. The Settlement (Paragraph 14(a)) requires the SJRRP to submit the Permit Application no later than September 30, 2010. It is expected that it will require up to 18 months for NOAA to review and process the 10(a)(1)(a) Permit once it is received from the SJRRP. Meeting the September 30 Settlement milestone will be essential to enabling the SJRRP to reintroduce spring run Chinook salmon to the San Joaquin River by December 31, 2012.

3.1.5 Prepare a “Working Draft” of the Restoration Flow Guidelines (RFG)

The Settlement requires that the SJRRP complete the RFG prior to commencement of Restoration Flows. Implementation of the 2010 Interim Flow Program provides the first opportunity to test and refine the RFG process under real-time conditions. The SJRRP should complete a formal “Draft RFG” document for testing by the SJRRP, Settling Parties and RA. While the SJRRP staff has been working cooperatively with the RA and Settling Parties to test coordinating water year forecast updates and real-time flow scheduling measures with the RA, it is important that a “working draft” RFG be formally identified by the SJRRP so that it can be updated and refined during 2010 to reflect the experience gained during implementation of 2010 Interim Flow releases, including the comments/feedback provided by the RA and Settling Parties.

3.2 2010 SJRRP Challenges

In order to achieve the 2010 goals discussed in Section 2.6.1, the SJRRP will need to successfully address several challenges that involve downstream landowners and local agencies. These include:

- Completing negotiations with downstream private landowners to obtain TEPs from private landowners that are necessary for SJRRP staff and consultants to be able to enter private lands to conduct essential site surveys;
- Obtaining operating agreements with Mendota Pool operators/districts that will be necessary to implement effective monitoring and accounting measures so that Interim Flow management can be adequately documented;

- Conducting discussions with landowners adjacent to the Eastside Bypass and Mariposa Bypass and, if necessary, to obtain flow easements in the Eastside and Mariposa Bypasses so that Interim Flows can be conveyed through the Bypasses without interruption and consistent with the terms of the Settlement;
- Improving participation in TAC activities as member agencies (DFG and DWR) and federal liaisons (Reclamation, USFWS and NOAA); and
- Continuing consultation with the RA on issues/actions where the RA either is responsible for providing recommendations to the Secretary or the Secretary is responsible for consulting with the RA prior to implementing actions.

4.0 RA and TAC Activities and Assessment of Progress

The RA and TAC are assigned responsibilities by the Settlement to assist the Secretary in implementing the Settlement. This section describes the roles and activities of the RA and TAC, assesses the RA and TAC performance during 2009, discusses impediments to RA/TAC performance during 2009 and identifies RA goals for 2010.

4.1 Settlement Provisions Relating to the Roles of the RA and TAC

The Settlement identifies the roles of the RA and TAC and addresses the importance of consultation and interaction between the Implementing Agencies and the RA/TAC. In particular, Paragraphs 9 through 19 describe the interaction between the RA and the Secretary during Settlement implementation.

4.1.1 Required RA Consultation with the TAC

The RA, whether making recommendations to the Secretary or responding to the Secretary with recommendations during consultation initiated by the Secretary, is required to consult with the TAC. The RA relies on the TAC to assure that comments/recommendations submitted to the Secretary have received appropriate technical review and discussion prior to submittal to the Secretary. The willingness of the state agency members of the TAC to participate fully in the TAC meetings and preparation of draft TAC reports and recommendations is essential to enabling the TAC to provide effective consultation to the RA.

4.1.2 RA Recommendations Required to Be Submitted to the Secretary

Five Settlement paragraphs (Paragraphs 12, 13, 14, 15 and 18) identify a total of nine (9) separate recommendations that the RA is required to submit to the Secretary to assist in implementing the Settlement. These required RA recommendations address:

- Additional measures not addressed by the Settlement that may further enhance the success of achieving the Restoration Goal (Paragraph 12);
- The need to provide for Buffer Flows (Paragraphs 13(a) and 18, Exhibit B);
- Acquisition of water from willing sellers in addition to Exhibit B water year allocations (Paragraphs 13(c)(1), 13(c)(2));
- The date for commencement of Restoration Flows (Paragraph 13(i));
- Measures for reintroducing of spring run and fall run Chinook salmon to the San Joaquin River (Paragraph 14(b) and Exhibit D));
- The Program of Interim Flows designed to collect relevant information concerning flow temperatures, fish needs, seepage losses, recirculation, re-capture and re-use of water (Paragraph 15(a) through (d) and Exhibit B); and

- The manner in which flow schedule hydrographs shall be implemented and when the Buffer Flows shall be needed to help meet the Restoration Goal (Paragraph 18).

4.1.3 Required Secretary Consultation with the RA

The Settlement also requires the Secretary to consult with the RA prior to implementing the following actions:

- Completion of the improvements specified in Paragraph 11 (Paragraphs 9 and 11);
- Transfer of water within an applicable hydrograph for that year (Paragraph 13(c)(2))
- Temporarily increasing, reducing or discontinuing release of water called for in the Exhibit B hydrographs, and resuming releases that would have occurred in the absence of such release modifications (Paragraph 13(e));
- Assuring that the Secretary reintroduces Chinook salmon at the earliest possible date after commencement of sufficient flows and issuance of necessary permits (Paragraph 14(a));
- Actions by the Secretary if the Secretary decides to decline to follow RA recommendations on reintroduction (also Paragraph 14(b));
- Determination of existing channel capacity and impact of Interim Flows on channel construction work, for the purpose of implementing Interim Flows (Paragraph 15(e)); and
- Development of procedures for coordinating technical assistance, regulatory compliance and sharing of information with other federal or state agencies as well as with the RA and TAC (paragraph 19(a)).

4.2 TAC Activities

4.2.1 TAC Meetings

During 2009, the RA convened a total of thirteen (13) TAC meetings, including three (3) TAC field trips. TAC meetings were convened on the following dates:

January 6	July 14	
February 23	August 11	
March 25	September 17	
April 6/7* and 27/28*	October 13	
May 11	November 9*	
June 15	December 15	*Denotes River Site Visits

The TAC Meeting Minutes for 2009 are available upon request.



TAC Members preparing to raft down Reach 1 (left, April 28, 2009) and TAC members and federal liaisons observing the leading edge of the Interim Flows below the Chowchilla Bifurcation Structure (right, November 9, 2009)

4.2.2 TAC Participation in SJRRP Public Work Group Meetings

During 2009 one or more TAC members participated in the following SJRRP Work Group meetings:

Restoration Flow Guidelines March 12, July 29 and September 3

Fish Management Work Group February 10, May 28 and June 24

Restoration Goal Technical
Feedback Group July 21, September 22 and November 11

4.2.3 TAC Preparation of Recommendations to the RA

During 2009 the TAC prepared the following reports and recommendations to the RA designed to assist the PMT in implementing the Settlement.

- TAC Interim Flow Monitoring Recommendations in February;
- TAC Recommendations re: *Priority Information Needs* in April;
- An updated 2009/2010 TAC Work Plan in April;
- Final TAC Recommendations re: October 1 to November 20, 2009 Interim Flows; and
- TAC submittal of Draft 2010 Interim Flow Recommendations to the RA in October.

4.2.4 Appointment of New TAC Member

In December 2009, the non-federal Settling Parties (NRDC and Friant) jointly selected Mr. Ed Solbos as the sixth member of the TAC. The appointment of Mr. Solbos added extensive river restoration engineering design and construction experience to the TAC. Mr. Solbos' prior experience during a career with the Bureau of Reclamation included a principal role managing

implementation of the Trinity River Restoration Program in Northern California. With the appointment of Mr. Solbos, for the first time, the TAC had the full roster of members provided for by the Settlement.

4.3 2009 RA Goals and Activities

The RA engaged in a wide range of activities during 2009 consistent with the terms of the Settlement. These activities included convening and managing TAC meetings and work efforts, preparation of recommendations that were submitted to the Secretary and consultation activities involving the SJRRP, local and state agencies and outside interests.

4.3.1 RA Goals for 2009

The primary RA goals for 2009 focused on achieving the following:

- Directing, managing and facilitating the activities of TAC consistent with the terms of the Settlement;
- Submittal of responses to consultation requested by the Secretary in implementing the Settlement;
- Preparing 2010 Interim Flow Program recommendations;
- Preparing a timely 2008 Annual Report for submittal to the Settling Parties and a Mid-year Report to the RLF; and
- Providing effective consultation for the PMT, state and local agencies and interested public organizations and interests to improve the ability of the RA to assist the Secretary in implementing the Settlement and achieve the Restoration Goal.

4.3.2 RA Activities in Conjunction with the TAC

In conjunction with the TAC the RA:

- Convened and chaired the thirteen TAC meetings cited in Section 3.1.1; and
- Participated along with TAC members in the SJRRP Public Work Group meetings cited in Section 3.1.2.

4.3.3 RA Consultation Activities

RA consultation during 2009 included: (1) Settling Party consultation; (2) ongoing activities that involved the PMT and other agencies convened by the PMT as part of the SJRRP Working Groups and Project Teams; (3) consultation and outreach to other interests involved in or affected by implementation of the SJRRP; and (4) consultation with local governments, agencies and interested parties relating specifically to RA Recommendations for the Fall Interim Flow releases. These consultation activities are discussed below.

Ongoing Participation in Settling Party Consultation Meetings

The RA participated in the monthly Consultation Meetings at the invitation of the Settling Parties. These meetings address policy, funding, coordination and consultation issues confronted

during implementation of the Settlement. As part of an effort to assure that consultation between the PMT and RA met the requirements and intent of the Settlement, the RA initiated discussions with the Settling Parties intended to revise the 2008 Consultation Agreement. The resulting changes to the Consultation Agreement resulted in additional RA access to PMT Work Group activities and improved the ability of the RA to fulfill the responsibilities set forth in the Settlement for the RA and TAC.

Ongoing Consultation with the PMT and Agencies

During 2009 the RA regularly consulted with the SJRRP PM, other members of the PMT and with the Project Teams assigned to manage the specific projects identified in Paragraph 11 of the Settlement. RA consultation in this category included:

- Weekly consultation with the PM to coordinate RA/TAC/PMT activities and improve RA/TAC awareness of current and emerging implementation issues;
- Participation in Project Team meetings involving implementation of SJRRP improvement projects identified in Paragraph 11 of the Settlement, including
 - Reach 2B and the Mendota Pool Bypass meetings;
 - Reach 4B/Eastside Bypass/Mariposa Bypass meetings; and
 - Arroyo Canal and Sack Dam meetings.

RA participation in the Project Team meetings began in October and continued on a bi-weekly basis through the end of the year. RA participation will continue in 2010.

- Participation in the bi-weekly Environmental Compliance Work Group meetings, beginning in October (schedule conflicts prevented consistent participation);
- Participation in the monthly Water Management Group Technical Feedback meetings held before the monthly FWUA Advisory Committee Meetings;
- Participation in Reach 2B and Reach 4B landowner meetings conducted by the PMT;
- Participation in Scoping Meetings conducted by the PMT staff for the project-specific EIS/R documents relating to Reach 2B/Mendota Pool Bypass and Reach 4B projects; and
- Periodic consultation with individual PMT staff on a variety of technical issues.

Ongoing Consultation with Outside Organizations

During 2009 the RA consulted with the following groups/organizations that are either impacted by or interested in the implementation of the SJRRP:

- **Resource Management Coalition (RMC)** – The RMC is a coalition of downstream landowners and water agencies that conduct their Board Meeting at the end of most months in Los Banos. The RA attended seven of these Board Meetings and provided briefings on the status of RA recommendations that were being formulated but not yet transmitted to the Secretary. The RA also provided briefings on two occasions to the

RMC Executive Committee. These briefings addressed evolving RA recommendations dealing with the Interim Flow Program, reoperation of the Chowchilla Bifurcation Structure, and monitoring.

RA participation in RMC meetings on the following dates:

January 31	July 31
April 24	September 25
May 29	October 30
June 26	

- **San Joaquin River Partnership (River Partnership)** – The River Partnership was created in 2009 by a coalition of non-profit organizations interested and involved in efforts to restore the San Joaquin River and to enhance public access to, use and enjoyment of the San Joaquin River. The River Partnership seeks to improve cooperation and coordination among its separate organizations and to identify ways that they can assist agency and other efforts to restore the San Joaquin River. The RA was invited to attend River Partnership meetings and managed to participate in three meetings during 2009.
- **Water Education Foundation (WEF)** – The RA participated in the November 12/13 WEF tour of the San Joaquin River and provided commentary relating to RA/TAC activities and progress in implementing the SJRRP from the perspective of the RA.

Outside Consultation Specifically Related to the Fall Interim Flow Recommendations

Beginning in late June of 2009, the RA initiated a series of consultation meetings with of agencies, local governments and elected officials, other local interests to discuss the anticipated commencement of the Fall Interim Flow releases on October 1, 2009. RA consultation meetings with these interests included, as schedules permitted, representatives of the PMT and Settling Parties.

These RA consultations included the following meetings with:

- the Director of the San Joaquin River Conservancy on June 25;
- the Executive Director Fresno Business Council on June 25;
- the Fresno County Board of Supervisors Chair Susan Anderson on July 23, accompanied by Steve Ottemoeller (FWUA)
- City of Fresno Mayor Ashley Swearengin, Chief of Staff Georgeanne White and Lon Martin (Water Department) on July 30, accompanied by Ron Jacobsma (FWUA)
- RMC Board of Directors on July 31, accompanied by Bill Luce (FWUA) and Ali Gasdick (Reclamation)

- Madera County Supervisor Frank Bigelow on August 3, accompanied by Paula Landis (DWR) and Steve Ottemoeller
- Fresno Supervisor Phil Larson and representatives of the Public Works and Planning Department on August 3, accompanied by Steve Ottemoeller
- Directors of the San Joaquin River Group Authority on August 5, accompanied by David Mooney (Reclamation)

RA Milestone Accomplishments

During 2009 the RA, following consultation with the TAC, submitted the following recommendations to the Secretary:

- *Recommendations on Monitoring and Evaluating Interim Flows to the Upper San Joaquin River* (February);
- *Recommendations on Interim Flow Releases from Friant Dam for October 1 through November 20, 2009 to the Upper San Joaquin River* (August); and
- *Transmittal Letter and Recommendation to Evaluate Reoperation of the Chowchilla Bypass Structure for Routing of Interim and Restoration Flows* (August).

RA Reports to the Settling Parties

- Submittal of the *RA 2008 Annual Report* to the Settling Parties in February and made available to the public in February; and
- Submittal of the *Restoration Administrator 2009 Mid-Year Report* to the Resources Legacy Fund (RLF) and the Settling Parties in August.

4.4 Assessment of RA and TAC Performance in 2009

4.4.1 Assessment Criteria

An assessment of RA and TAC performance during 2009 could reasonably be based on an assessment of how well the RA and TAC succeeded in achieving the five primary goals identified in Section 3.3.1.

- RA management and facilitation of TAC activities;
- RA submittal of responses to consultation requested by the Secretary in implementing the Settlement;
- Preparing the 2010 Interim Flow Program recommendations;
- Submitting the 2008 Annual Report to the Settling Parties and the Mid-year Report to the RLF; and

- Effectively consulting with the PMT, state and local agencies and interested public organizations and interests.

4.4.2 Assessment of Progress

Based on the above criteria, RA/TAC efforts to achieve the identified goals during 2009 should be considered moderately successful. As discussed below, there were successes during 2009 but there also were areas where the RA should seek to improve RA/TAC efforts during 2010.

RA/TAC Goals that Were Achieved During 2009

RA and TAC efforts during 2009 demonstrated progress toward assisting the Secretary to achieve the Restoration Goal. The RA convened the TAC for thirteen meetings during 2009 and the TAC prepared the work products identified in Section 3.2.3 to be used by the RA in managing TAC activities and as the basis for RA recommendations to the Secretary. The RA also consulted with a range of outside persons and organizations that are either affected directly by implementation of the Settlement (*e.g.*, the RMC and River Partnership) or are interested in implementation of the Settlement and achievement of its Restoration and Water Management goals.

RA/TAC Goals that Were Not Fully Achieved During 2009

There are specific areas where the RA and TAC either did not achieve a primary goal or where it was only partially successful in achieving their goal. These areas are discussed below.

- ***RA Interim Flow Recommendation for February 1 to December 1, 2010***

The RA recommendations for the 2010 Interim Flow Program were supposed to cover the entire period from October 1, 2009 through December 1, 2010. The RA provided recommendations to the Secretary in time for review and action by the Secretary prior to the SJRRP Fall 2009 Interim Flow releases that commenced October 1 and ended November 20, 2009.

However, the 2009 Interim Flow recommendations provided by the RA represented only a partial success because the Settlement (Paragraph 15(a) and (b)) requires the RA to submit 2010 Program of Interim Flows recommendations, which were to commence October 1, 2009, and continue to December 1, 2010. The RA recommendations for the period February 1, 2010, through December 1, 2010, were not submitted to the Secretary until January 20, 2010, in time to be considered by the Secretary prior to commencing Interim Flow releases on February 1, as required by the Settlement. Section 4.5.2 discussed the reasons for the delay.

- ***PMT Consultation with the RA***

Considerable effort involving the Settling Parties, PMT and RA focused on addressing the desire by the RA and non-federal Settling Party for more timely and substantive consultation by the PMT with the RA and non-federal Settling Parties during Settlement implementation. Achieving an effective process for consultation involving the PMT and RA proved difficult but significant progress was achieved.

The RA and PM are continuing to test the modified consultation measures agreed upon during 2009. Approximately mid-2010 the RA and PM will report to the Settling Parties on the

progress made in improving PMT consultation with the RA and, if necessary, additional measures will be identified and considered at that time for implementation.

4.5 Impediments to the Ability of the RA to Assist the Secretary

4.5.1 State Agency Participation in TAC Meetings and Work Products

State Agency Membership in the TAC

The TAC is composed of six “voting” member and two “non-voting” members, one from each of the two state Implementing Agencies (DWR and DFG). The six TAC voting members include:

- Representatives from each of the two non-federal Settling Parties (NRDC and FWUA);
- One member appointed by NRDC;
- One member appointed by FWUA; and
- Two members appointed jointly NRDC and FWUA.

As indicated by its title, the TAC is intended to provide technical advice to the RA where the RA would be providing recommendations to the Secretary. The TAC is not to be drawn into policy, regulatory or environmental compliance issues. Under the terms of the Settlement, the RA is responsible for convening TAC meetings and managing TAC activities.

During Settlement negotiations leading to its signing in September, 2006, both DWR and DFG stated their desire to be included as TAC members. Consequently, the Settlement designates DWR and DFG as TAC members that will participate fully in activities assigned to the TAC by the Settlement. As members of the TAC, DWR and DFG have a different role than the federal Implementing Agencies (Reclamation, USFWS and NOAA), which are not TAC members. The federal agencies are designated as “liaisons” to the TAC and are available to provide technical support as requested by the RA.

State Agency Participation in TAC Activities During 2009

Neither the DWR nor the DFG fully participated in TAC activities during 2009. DFG attended only two of the thirteen (13) TAC meetings in person. DFG attended all but one of the remaining meetings via conference/web-based meetings. DFG provided little or no interaction with the TAC during formulation of TAC technical recommendations to the RA addressing biological and hydrological monitoring measures or TAC recommendations related to implementation of the Interim Flow Program. The DWR was a more regular “in person” attendee at TAC meetings and did participate more in TAC discussions during meetings. However, DWR also did not participate in the formulation of TAC recommendations and neither agency provided comments on any of the draft TAC technical recommendations that were distributed among TAC members prior to being finalized by the TAC for submittal to the RA. These TAC recommendations addressed important SJRRP implementation issues, including

biological and hydrologic monitoring programs/measures and implementation of the Interim Flow Program.

Factors Contributing to Limited State Agency Participation in TAC Activities

Prior to finalizing this Annual Report the RA discussed concerns about the limited participation by state agencies in TAC activities with the TAC to explore reasons why technical interaction between the TAC and its state agency members was not occurring at the level envisioned by the Settlement. The agency staff identified the following as factors that, from their perspective, contributed to limit state agency participation in TAC efforts during 2009 and prior years:

- Although some agency staff want to be more pro-active in participating with the TAC, there were communication and “boundary” issues at the federal level that worked together to discourage more direct and consistent communication by agency staff with the TAC;
- TAC meetings did not provide sufficient designated time for discussing technical issues - too much time was spent during TAC meetings on “process” issues, agency updates and background discussions on regulatory/environmental compliance topics;
- Budget and staff resources made it difficult to assign technical agency staff to travel to meetings located remotely from staff offices (*e.g.*, Fresno staff were asked to travel to Sacramento and Sacramento staff are often expected to travel to Fresno);
- There was a need for more direct communication with agency staff outside the TAC meetings, with the understanding that such discussions would need to be brought to the full TAC for discussion and follow up; and
- Communication between the TAC and agency staff, including SJRRP Work Groups, should include have included more formal transmittals of questions and recommendations for review and formal response by the agencies and Work Groups.

The above member agency concerns will be addressed by the RA through a combination of actions, including improved planning for and management of TAC meetings and a more disciplined approach to identifying and requesting agency assistance/involvement on specific technical challenges/issues. The RA responses to these concerns are identified in part in Section 5.0 (RA 2010 Goals).

Another factor identified by state agency staff that affected participation in TAC activities is more difficult to address. This factor is based on the opinion that the state agencies have sufficient internal staff expertise to address SJRRP challenges and, given the limited agency resources (staff time and funding) and extremely tight SJRRP schedule milestones, the agency cannot afford to “divert” staff resources to review/respond to draft TAC recommendations because it would not be a good use of agency resources. From the RA perspective and, more important, in terms of the MOU and Settlement, this position is neither compatible with the provisions of the Settlement, nor with the previously expressed desire of the agencies to be a part of the TAC. This is an issue that will continue to be addressed in 2010.

***Importance of Agency Participation in TAC Meetings and Interaction with the TAC
Prior Formulation of Technical Recommendations***

During 2009 the TAC devoted considerable time to developing technical recommendations without the benefit of the participation by the state agencies. Important TAC monitoring recommendations did not receive the critical review by state Implementing Agencies that could have improved the quality/effectiveness of TAC efforts. As the year progressed, the TAC did not know what TAC monitoring and other recommendations were implemented during the 2009 Fall Interim Flow releases. The lack of participation by key TAC members adversely affected the collaborative process and, ultimately, impeded the ability of the TAC to assist the Secretary in achieving the Restoration Goal.

Interaction between the TAC and agency technical staff is particularly important because the TAC does not have access to draft SJRRP documents prior to distribution for public review. The TAC relies on agency staff updates and shared information, particularly information which has a direct bearing on the TAC's Settlement responsibilities to consult with the RA. Without substantial consultation between the TAC and state agency staff and consultants, the TAC will be forced to provide comments and recommendations late in the documentation process when many of the foundational decisions concerning data needs, alternatives and design criteria have been made by SJRRP staff. Depending on the nature of future TAC comments, the need to provide comments late in the document preparation process could result in delays that would have been avoidable if earlier TAC review of SJRRP actions/documents was possible.

4.5.2 Settling Party Differences in Interpreting the Settlement

Significant differences among the Settling Parties in interpreting important provisions of the Settlement came into focus during 2009.

Applicability of Settlement Exhibit B to Paragraph 15 Interim Flows

Differing interpretations among Settling Parties of Paragraph 15 and Exhibit B provisions for applying "Flexible Flows" were discussed in Section 4.4.2. This issue came into focus as the RA was preparing the Fall Interim Flow recommendations (*i.e.*, the ability to move flows 30 days earlier or later than the timing provided for in the Default Flow Schedules in Exhibit B). These differences in interpretation delayed RA preparation of the Fall Interim Flow recommendations while the Settling Parties attempted to reconcile their differences in order to provide guidance to the RA. The crux of the interpretation difference was whether the Flexible Flow provisions in Exhibit B of the Settlement were applicable to Interim Flows (*i.e.*, Paragraph 15 flows), or, whether the Flexible Flow provisions in Exhibit B applied solely to Restoration Flows (*i.e.*, Paragraph 13 flows). The RA was compelled to provide 2010 Interim Flow Recommendations to the Secretary on January 20, 2010, without benefit of final guidance from the Settling Parties.

The Settling Parties agree that the Flexible Flow provisions apply to the Restoration Flows; however, the Settling Parties disagree about whether the "Flexible Flow" provisions in Exhibit B also apply to the Paragraph 15 Interim Flows and the methodology to be used for determining the volume of Interim Flows that would be allocated consistent with the Settlement during water year types when downstream conveyance capacity is limited because required facility

improvements are not yet constructed. That is precisely the condition that is being confronted during the 2010 Interim Flow Program; downstream conveyance capacities are limited and the Exhibit B Flow Schedule maximum release rates for Normal Dry, Normal Wet and Wet water years cannot be released from Friant Dam.

The Settling Parties accepted RA recommendations for the October 1 to November 20, 2009, time period provided for in Paragraph 15(a); but, they were not able to reach agreement on a flow schedule for the February 1 to December 1, 2010, Interim Flows addressed by Paragraph 15(b). Thus, the RA was able to prepare and submit recommendations to the Secretary only for the 2009 fall Interim Flows component of the 2010 Interim Flow Program. The RA was not able to finalize and submit recommendations for the 2010 Interim Flow Program set forth in Paragraph 15(b) covering the period from February 1 through December 1, 2010.

On December 20, 2009, the RA received informal guidance from the Settling Parties concerning their interpretation of the Settlement provisions covering Interim Flows. Even then, the RA was advised that the guidance was subject to change pending final agreement on guidance language by the Settling Parties. The RA considered the guidance provided by the Settling Parties and submitted Interim Flow recommendations to the Secretary on January 20, 2010, for the period starting February 1 and continuing to December 1, 2010. The RA decided to prepare recommendations without benefit of final Settling Party guidance. As of the submittal of this Annual Report, the Settling Parties were still discussing their interpretations of the Flexible Flow provisions. To avoid potential confusion during implementation of the remaining 2010 Interim Flow releases it is important that the Settling Parties reconcile their differing interpretations as soon as possible and provide updated guidance to the RA.

Interpretation of Settlement Paragraph 12

In addition, the Settling Parties did not agree on the interpretation of Paragraph 12 of the Settlement with respect to the ability of the RA to recommend additional measures not addressed by the Settlement in order to enhance achieving the Restoration Goal. Specifically, the Settling Parties disagreed on the consistency with Paragraph 12 of the RA recommendation to study the operation of the Chowchilla Bifurcation Structure to allow Interim Flows to be diverted into the Chowchilla Bypass. The difference of opinion among the Settling Parties focused on whether or not the RA recommendation to study the reoperation of the Bifurcation Structure was an “additional measure” consistent with Paragraph 12 language.

The RA recommendation for the Secretary to study of the benefits and impacts related to reoperating the Bifurcation Structure to allow Interim Flow releases to be conveyed by the Chowchilla Bypass was generated by the limits that downstream conveyance capacity imposed on the release rates set forth in the Exhibit B Flow Schedules for the Normal Dry, Normal Wet or Wet water years. For instance, SJRRP staff determined that channel capacity conveyance limits in Reach 2B and Reach 3 would restrict maximum sustained releases from Friant Dam to 1,620-1,660 cfs. If the Bifurcation could be operated to permit diversion of Interim Flows into the Chowchilla Bypass, perhaps up to the maximum release rate from Friant Dam specified in the Exhibit B Flow Schedules could be accommodated. For instance, according to Exhibit B Flow Schedules a Normal Wet year would result in maximum release rate from Friant Dam 4,000 cfs and a Normal Dry water year would have a maximum release of 2,500 cfs.

The ability to release water at the rates specified in Exhibit B would enable a significantly greater range of Interim Flow release conditions to be studied in Reach 1 and Reach 2A, thus enhancing the experimental value of the Interim Flows for gathering and analyzing information on topics such as sediment transport and spawning gravel mobility prior to commencing the Restoration Flows. The increased flow rates that would be possible if the Interim Flows could be diverted down the Chowchilla Bypass would not increase the volume of Interim Flow releases allocated by Exhibit B.

5.0 2010 RA Goals

In 2010, the RA intends to focus on the following goals and actions to assist the Secretary in implementing the Settlement. These RA goals for 2010 are designed to assist in achieving SJRRP goals and to address impediments to progress toward achieving the Restoration Goal that were encountered during 2009 and discussed previously in this document. The 2010 RA goals include:

- Completing the 2009 Annual Report;
- Implementing changes in the operation of the TAC to improve communication between the RA/TAC and SJRRP Implementing Agencies on technical issues and strategies, including;
 - Providing for designated TAC meeting agenda items and times to focus on important technical issues,
 - Facilitating TAC consultation with SJRRP technical staff concerning the findings contained in the 2009 Annual Technical Report (ATR) that describes monitoring and analyses conducted during the 2009 Interim Flow releases to inform and improve monitoring measures and identification of monitoring priorities during implementation of the 2010 Interim Flow releases,
 - Encouraging written exchanges of questions and responses among the TAC, FMG, RGTFG and WMG, as appropriate; and
 - Scheduling selected TAC meetings to provide a workshop format for restoration topics to be addressed by a combination of TAC, federal liaison and other technical experts, thereby providing additional guidance to enhance the prospect for achieving the Restoration Goal.
- Continuing RA participation in the SJRRP Project Team meetings to stay current with SJRRP activities/progress and, where feasible, provide early input to the SJRRP staff concerning emerging issues and questions of concern to the RA and TAC;
- Continuing TAC and RA participation in SJRRP Public Work Group technical feedback meetings and encourage SJRRP staff to provide more frequent technical feedback opportunities;
- Providing timely RA recommendations for implementing the Interim Flow releases during 2010;
- Preparing RA recommendations for the 2011 Interim Flow releases in accordance with SJRRP staff needs; and
- Continuing RA consultation with local agencies, state and federal agencies, downstream landowners and water managers, and public interest organizations to assist the SJRRP in facilitating stakeholder and public understanding of the SJRRP program and gain perspective on emerging technical and implementation priorities.

6.0 Additional Measures Recommended to Enhance Achieving the Restoration Goal

Settlement Paragraph 12 acknowledges that “. . . there are likely additional channel or structural improvements . . . that may further enhance of achieving the Restoration Goal.” Paragraph 12 also requires the RA to identify such additional measures in recommendations to the Secretary in order to enhance the prospects for achieving the Restoration Goal. Based on the experience gained during 2009, the RA has identified two additional measures that are recommended for consideration by the Secretary.

6.1 Address the Effects on Efforts to Achieve the Restoration Goal Resulting from Existing Conveyance Capacity Limits in Reach 3 Downstream of the Mendota Dam

Consideration of this additional measure by the Secretary is recommended by the RA because the Settlement does not address facility improvements or specific management actions in Reach 3 of the San Joaquin River.

During 2010, it is anticipated that the Interim Flow releases from Friant Dam will reach maximum sustained rates of 1,595 to 1,660 cfs and that the Interim Flows entering the Mendota Pool will reach up to 1,300 cfs. It is also anticipated that up to 1,300 cfs would be released from Mendota Pool to Reach 3. The SJRRP states that the conveyance capacity of Reach 3 may be limited to 1,300 cfs. Current estimates of channel conveyance capacity in Reach 3 downstream of the Mendota Pool indicate that this reach cannot accommodate up to the 1,300 cfs of Interim Flows in addition to the irrigation flows that annually are provided by the Operators for downstream users. In addition, there is uncertainty as to the accuracy of the flow capacity conveyance constraint that should be investigated as the 2010 Interim Flow Program is implemented. These investigations should be designed by the SJRRP staff to provide a clear understanding of real conveyance capacity constraints and specific locations where seepage impacts or other conveyance constraints are identified.

There is an urgent need not addressed by the Settlement for the SJRRP staff to determine the effects of the restricted channel flow capacities within Reach 3 and Reach 4 downstream of the Mendota Dam upon the ability to convey Interim Flows through Mendota Pool. This determination should address appropriate mitigation measures in the event that Interim Flows downstream of the Pool would need to be managed to avoid/reduce impacts to adjacent properties and/or operator facilities.

6.2 Study the Reoperation of the Chowchilla Bifurcation Structure to Allow Interim Flows to Be Diverted to the Chowchilla Bypass During Interim Flow Pulse Flow Periods

The Settlement does not provide for use of the Chowchilla Bypass as part of the SJRRP. In August of 2009, the RA recommended that the SJRRP study whether, after the 2010 Interim Flow releases were completed, it would be desirable to re-operate the Chowchilla Bifurcation Structure to permit Interim Flow releases to be diverted down the Chowchilla Bypass under certain circumstances and for specific reasons. The RA reasons for recommending this study were discussed in Section 4.5.2.

This RA recommendation was opposed by FWUA on grounds that such action would be outside the Settlement. The RA recommendation was supported by NRDC. Reclamation declined to accept the RA recommendation unless there was agreement among the non-federal Settling Parties on interpretation of Paragraph 12. The inability of the Settling Parties to agree on a common interpretation of Paragraph 12 did not impede progress during 2009 but it could impact implementation of the Settlement beginning in 2011, assuming the appropriate studies could be completed during 2010.

The RA recommends that Reclamation work with the non-federal Settling Parties to reconcile their respective interpretations of Paragraph 12. If reconciliation of the FWUA and NRDC positions cannot be achieved, the RA recommends that Reclamation accept the RA recommendation to study the reoperation of the Bifurcation Structure on its own merits and either accept or accept with modifications the RA recommendation.

7.0 TAC and RA Expenditures

The RA and TAC continue to operate under the oversight of the Resources Legacy Fund (RLF) pursuant to the terms of a May 25, 2007, Grant Agreement (2007 Agreement) between the State (DWR and DFG) and RLF. A total of \$1,950,000 was provided for RA/TAC operations under the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000. The RLF administers funding for RA and TAC and contracts with the RA and TAC members. RA/TAC contracts were to expire June 30, 2009; however, RLF received a “time-only” extension from DWR/DFG that enables remaining funds to be used through December 31, 2010

At the end of 2009, \$1,755,000, or, all but \$195,000 of the state funding had been transferred to RLF by DWR and DFG. The final grant payments were due in April of 2009. DWR has completed payment of its share of the \$1,950,000. However, as of the submittal of this Annual Report, DFG still has not paid its final installment of \$195,000. Of the \$1,755,000 transferred to RLF to support the RA and TAC, a total of \$1,136,442 has been expended to pay for RA and TAC activities (\$1,028,942) and RLF Administrative costs (\$107,500) through 2009. During 2009, RA and TAC expenditures totaled \$486,551 (see Table 1). It should be noted that when Rod Meade assumed the RA position January 2009, there was a six-week overlap of the incoming and outgoing RAs to enable the departing RA to work with the incoming RA during January and mid February to enable a smooth transition and facilitate completion of the 2008 Annual Report.

At the end of 2009, RLF had received \$1,755,000 for RA/TAC support; \$1,649,648 was committed to RA/TAC/RLF accounts; and \$1,136,442 had been spent. Therefore, by the end of 2009, \$513,205 was available to support RA and TAC activities during 2010.

Available funds through December 31, 2010, currently are allocated as follows:

RA Account	\$189,942
TAC Account	\$310,763
RLF Overhead	<u>\$ 12,500</u>
Total Funds Available	\$513,205

When DFG makes its final \$195,000 installment payment pursuant to the 2007 Agreement, the available funds for RA/TAC activities would increase to \$708,205. At that time, sufficient funds will be available to support RA and TAC activities through 2010. If the DFG payment is not received in 2010, funding may be adequate but there would be a need to evaluate expenditure rates by June 30, 2010, to determine whether the RA/TAC efforts could continue through the year at current levels. Under any circumstances, additional funding will need to be provided during 2010 to support RA/TAC activities during calendar year 2011.

Table 1

2009 RA AND TAC EXPENDITURES

(January 1 - December 31, 2009)

Restoration Administrator Account

Brown and Caldwell	
Salary	\$ 16,188
Expenses	-----
SUBTOTAL	\$ 16,188
R.J. Meade Consulting, Inc.	
Salary	\$237,680
Expenses	\$ 25,878
SUBTOTAL	\$263,558
Technical Assistance	-----
Miscellaneous*	\$ 1,214
2009 RA Account Total	\$280,959

Technical Advisory Committee Account

Friant Water Users Authority	
Salary	\$ 35,170
Expenses	\$ 1,985
SUBTOTAL	\$ 37,155
Hanson Environmental, Inc.	
Salary	\$ 34,865
Expenses	\$ 1,419
SUBTOTAL	\$ 36,284
McBain & Trush, Inc.	
Salary	\$ 68,359
Expenses	\$ 12,262
SUBTOTAL	\$ 80,621
Peter Moyle	
Salary	\$ 15,188
Expenses	\$ 478
SUBTOTAL	\$ 15,665
Natural Resources Defense Council	
Salary	\$ 30,490
Expenses	\$ 1,637
SUBTOTAL	\$ 32,127
Ed Solbos	
Salary	\$ 3,250
Expenses	\$ 490
SUBTOTAL	\$ 3,740
2009 TAC Account Total	\$ 205,592

Total RA and TAC Accounts \$ 486,551

*Miscellaneous includes TAC meeting expenses and conference call costs.