

Upper Rio Grande Water Operations Review EIS and would not be made publicly available until this occurs. As noted in the April 11, and September 12, 2002, notes from the URGWOM Steering Committee meetings: (1) The consensus of the Steering Committee members was that the latest version of URGWOM should not be released until it has been tested and is ready for public use; (2) the data and results for various model runs were not totally successful, but furthered the model debugging, testing, and evaluation; (3) the middle Rio Grande valley water depletions are modeled too high; (4) the water planning model is currently simplistic and rough; and (5) water operations modeling is still undergoing troubleshooting, repairs, and enhancements. Thus, we conclude that URGWOM is not available for use in the economic analysis.

Nevertheless, during the July 22, 2002, meeting with the NMISC, it was agreed that the NMISC would run URGWOM and provide detailed comments, data, output, and interpretation to us during the open comment period on this and other relevant analyses. We also requested that the NMISC assist us in determining the economic costs of providing water to meet Rio Grande Compact delivery obligations separate from the economic costs of leaving water in the river for the silvery minnow. The NMISC indicated in its October 2, 2002, comments on the proposed critical habitat designation that the data and analyses were nearly complete and a report interpreting the results would be submitted in November 2002. Additional comments or data were not submitted. If additional comments or data had been submitted after October 2, 2002, we would not have considered them in the development of this final rule, the economic analysis, or the EIS because the data, analyses, and report would not have been submitted during the open comment period, and other parties would not have had the full opportunity to review and comment on the material.

Section 4(b)(2) of the Act states critical habitat shall be designated on the basis of the best scientific data available. We must make this determination on the basis of the information available at this time, and we are not allowed to delay our decision until further information is submitted. Therefore, we conclude the current hydrological model used in the economic analysis is the best scientific information available at this time, as required by the Act.

(54) *Comment:* The Economic Analysis appears to underestimate the

amount of supplemental water that is required to maintain flows specified by the biological opinion on the middle Rio Grande.

*Our Response:* From our experience, it is nearly impossible to guarantee continuous flow in the middle Rio Grande at all times of the year, regardless of the extremity of conditions. As a result, our analysis calculates the annual deficit of water below the required minimum flow in the 95th percentile and the 50th percentile worst-case (e.g., driest) year. This calculation results in an average annual deficit of 40,427 af/year in the middle Rio Grande. This estimate of supplemental water is within the range of other estimates of supplemental water required to maintain instream flow in the middle Rio Grande. Since 1996, the BOR has leased water each year to maintain instream flow during this dry period. In 2001, 22,000 af of supplemental water, from the conservation water agreement, was released and was sufficient to meet the supplemental flow requirements outlined in the June 29, 2001, biological opinion (J. Smith, pers. comm., 2002). In addition, Balleau Groundwater, Inc. (1999) estimated that it would require 52,600 af of water released from Cochiti to maintain a flow of 200 cfs at San Acacia in an average year. Therefore, we believe our estimate of approximately 40,000 af of supplemental water is accurate.

(55) *Comment:* The Service's analyses do not take into account upstream storage that would be needed to provide for supplemental flows, nor did the Service address storage of native water when storage is restricted in upstream reservoirs (e.g., see Rio Grande Compact, Article VII).

*Our Response:* The hydrologic model used in the economic analysis did not attempt to model the location of water used to supplement instream flow, but rather provided the amount of supplementary water needed at the San Acacia (middle Rio Grande) and Acme (middle Pecos River) gages. We did not identify sources of supplemental water (e.g., storage) within this designation, because these sources can vary annually. Moreover, the Federal agencies have discretion on selecting specific sources and storage of supplemental water (BOR 2001c; Corps 2001). The amount of supplemental flows will be dependent upon the environmental baseline of the silvery minnow, the proposed action by the Federal agency, and those discretionary actions that are part of the consultation.

(56) *Comment:* Future supplemental water will not be available in the middle Rio Grande as it was from 1996 to 2002.

*Our Response:* As with all biological opinions, if the Federal action agency, (i.e., the BOR in the June 29, 2001, biological opinion) cannot meet the measures described in the biological opinion that must be undertaken, reinitiation of formal consultation is required. In the middle Rio Grande, if supplemental water is not available to meet target flows contained in a biological opinion, then reinitiation of consultation would be required. Reinitiation of consultation has no bearing on the designation of critical habitat for the silvery minnow.

(57) *Comment:* The designation will steal water from an already drought-stricken area. Critical habitat will devastate the farming culture.

*Our Response:* The maintenance of river flows has been implemented through BOR's voluntary supplemental water program. This program is being implemented within the existing water rights framework, including Federal Indian water rights, San Juan-Chama contract rights, and state law water rights administered by the State of New Mexico. Supplemental flows to avoid destruction or adverse modification of critical habitat will likely be similar if not identical to what is currently required to avoid jeopardizing the species.

During the 2000 irrigation season, most of the supplemental water used to support the silvery minnow was provided through BOR leases of San Juan-Chama Project water from the City of Albuquerque. The City in turn provided that water to the MRGCD to finish the irrigation season, while allowing native Rio Grande flows to remain in the river without diversion. Moreover, in June 2002, the City of Albuquerque signed two agreements to provide 40,000 af of water to the BOR for supplemental flows for the silvery minnow and an additional 70,000 af of water to extend the MRGCD irrigation season from June to September 2002.

The BOR supplemental water program has been implemented on a year-to-year basis since 1997. During this period, no irrigation water has been used to augment river flows without being replaced (BOR 2001c). For example, the water that was leased from San Juan-Chama contractors and released during 2000 was used by MRGCD for irrigation and was exchanged for an equivalent amount of native Rio Grande water to provide supplemental flows for the silvery minnow. We believe that these types of collaborative actions will continue and do not anticipate that the