

amount of supplemental instream flow, required by past section 7 consultations (e.g., Service 2001b), will increase because an area is designated as critical habitat.

(58) *Comment:* The Service should analyze the impacts on groundwater, urban development, and operation of canals and other irrigation structures.

*Our Response:* The EIS analyzes impacts on water rights and management, land ownership and use, social and economic impacts, and a variety of other environmental consequences.

(59) *Comment:* The Service should consider the positive impact of critical habitat designation in the region's economy.

*Our Response:* The potential benefits of critical habitat are described in the economic analysis and EIS.

(60) *Comment:* It is currently impossible with the natural flow regime (i.e., after all managed uses of water are curtailed) to maintain the primary constituent elements related to water flow. The primary constituent element that indicates conditions "do not increase prolonged periods of low or no flow" presume a baseline is known.

*Our Response:* Critical habitat is designated on the basis of existing conditions within each of the river reaches. We acknowledge that some of these areas have the potential for no to low flow during certain seasons or years. This primary constituent element provides water of sufficient flows to reduce the formation of isolated pools, and is essential to the conservation of the silvery minnow because the species cannot withstand permanent drying of long stretches of river. In addition, please see response to comment 35 for information related to this particular issue.

(61) *Comment:* There is not enough information known about the silvery minnow or about the impacts of the designation to perform the required analyses.

*Our Response:* This final determination constitutes our best assessment of areas needed for the conservation of the silvery minnow. We must make this determination on the basis of the information available at this time, and we may not delay our decision until more information about the species and its habitat are available. *Southwest Center for Biological Diversity v. Babbitt*, 215 F.3d 58 (D.C. Cir. 2000).

(62) *Comment:* The Service concludes that low or no-flow conditions have become more prevalent in the last few decades. The hydrological data demonstrate that this is not true. These

unfounded claims indicate that a thorough hydrologic analysis of the middle Rio Grande should be completed using hydrological variability techniques (e.g., Richter *et al.* 1997).

*Our Response:* We have revised the "Background" section of this final rule. We are participating in the Upper Rio Grande Basin Water Operations Review and EIS with the Joint Lead Agencies and other cooperators, including the Corps, BOR, and the NMISC, to comprehensively review the water operations activities that are conducted under the existing authorities in the Rio Grande Basin above Fort Quitman, TX. Hydrological variability techniques (e.g., Richter *et al.* 1997) can guide river managers to define and adopt interim management targets before conclusive long-term research results are available. The Federal agencies have discretion when selecting specific river management targets and activities (e.g., sources and storage of supplemental water (BOR 2001c; Corps 2001)). Consequently, hydrological variability techniques could be applied to river management targets and activities at the discretion of the Federal agencies, but are beyond the scope of this designation.

(63) *Comment:* One commenter questioned why, although approximately 200,000 af of water were released in the summer of 2000 to save the silvery minnow from extinction, the species suffered one of its most significant declines during this artificially wet period. NM and other signatories of the Rio Grande Compact cannot afford this waste of water.

*Our Response:* In the spring of 2000, as a result of court-ordered mediation (*Minnow v. Keys*, Civ. No. 99-1230 JP/KBM-ACE), BOR, through voluntary leases and repayment agreements, and in cooperation with other entities, provided 168,000 af of water to the Rio Grande for the silvery minnow and for irrigation purposes during the year 2000. Data from silvery minnow population monitoring studies in 2001 indicated a slight increase of the population in the Angostura, Isleta, and San Acacia Reaches (Dudley and Platania 2001). Without efforts to maintain at least some flow in the Rio Grande in 2000, it is likely that the silvery minnow might have been extirpated from the middle Rio Grande (Dudley and Platania 2001). It is also important to note that, at least partially as a result of these supplemental flows, NM realized a credit of 100,000 af toward its current and future delivery obligations to TX under the Rio Grande Compact (BOR 2001c).

(64) *Comment:* Because of the silvery minnow, the Service has not allowed the BOR to maintain a channel through the delta area north of Elephant Butte Reservoir.

*Our Response:* On May 8, 2000, we received a biological assessment from BOR concerning the creation of a temporary channel through the upstream delta of Elephant Butte Reservoir. BOR proposed to implement several conservation measures—these were included and described in their biological assessment as part of the project. On August 4, 2000, we completed consultation by concurring with BOR's determination that the project "may affect but is not likely to adversely affect" the silvery minnow or its designated critical habitat, that it "may affect but is not likely to adversely affect" the southwestern willow flycatcher, and that it will have "no effect" on the bald eagle. During September 2000 and April 2001, BOR provided supplementary information and clarifications on the project activities. No additional effects were anticipated and it is our understanding that BOR is proceeding with the construction of the temporary channel in full compliance with its responsibilities under the Act. In a letter dated August 30, 2002, from the Service's New Mexico Ecological Services Field Office to the New Mexico Office of the State Engineer, we reiterated that environmental compliance with the Act had been achieved. In the letter, we specifically asked whether the State Engineer believed that further environmental clearances were required for the completion of the temporary channel. We did not receive a response to the August 30, 2002, letter.

(65) *Comment:* Many environmental groups are using the silvery minnow to further their agendas of stopping growth and development.

*Our Response:* The recovery of the silvery minnow follows our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Numerous individuals, agencies, environmental groups, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). We believe this stakeholder involvement will minimize the social and economic impacts that could be associated with recovery of this endangered species.

Section 4(a)(3) of the Act requires that the Secretary, to the maximum extent prudent and determinable, designate critical habitat at the time a species is