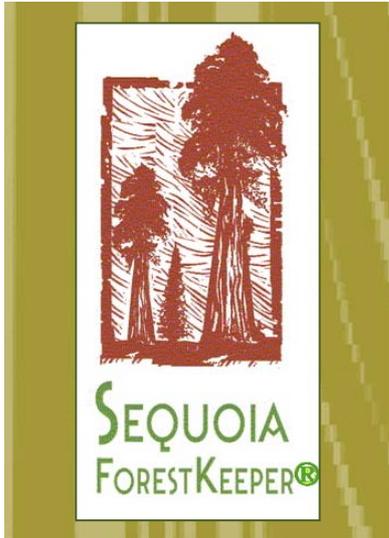


SIERRA CLUB



KERN-KAWEAH CHAPTER



Via Regulations.Gov Upload and Electronic Mail

December 1, 2014

Public Comments Processing
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RE: Proposed Critical Habitat Designation for the Yellow-billed Cuckoo; 79 Fed. Reg. 48547 (August 15, 2014) & 79 Fed. Reg. 67154 (Nov. 11, 2014)

Dear U.S. Fish and Wildlife Service and Sacramento Field Supervisor Norris;

The Kern-Kaweah Chapter of the Sierra Club, Sequoia ForestKeeper®, and the Center for Biological Diversity (“Center”) (collectively “conservation groups”) thank you and the U.S. Fish and Wildlife Service (FWS) for this opportunity to comment on the proposed critical habitat designation of the western distinct population segment of the Yellow-billed Cuckoo (western DPS).

As you are most likely aware, the conservation groups have been working to protect the resources of the Isabella Reservoir area (AKA Lake Isabella) of Kern County, California for decades and in particular have raised significant concerns regarding the impacts of dam operations on species and habitats.¹ The tributaries to and shoreline of Isabella Reservoir include the Audubon Kern River Preserve, the South Fork Kern globally important bird area (“IBA”), the Canebrake Ecological Reserve Units managed by California Department of Fish and Wildlife, Sequoia National Forest South Fork Wildlife Area, and designated critical habitat for the endangered Southwestern Willow Flycatcher. This area is of great importance to migratory and resident birds.

Moreover, the South Fork of the Kern River and Canebrake Creek, a tributary to the Kern, include 16.3 miles of designated critical habitat for the Southwestern Willow Flycatcher. 78 Fed. Reg. 344 (January 3, 2013). As much as ninety percent of riparian habitat used by Southwestern Willow Flycatchers for breeding territories has been lost or modified throughout the species’ range. *See* FWS, Southwestern Willow Flycatcher Recovery Plan, at 30, 53 (Aug. 2002); FWS, Designation of Revised Critical Habitat for Southwestern Willow Flycatcher; Proposed Rule, 76 Fed. Reg. 50542, 50567 (Aug. 15, 2011). The South Fork Kern IBA is one of the few places within the species’ range where riparian habitat has increased substantially in recent decades, and the area hosts one of the largest breeding populations of Southwestern Willow Flycatchers in California. This population peaked in 1997 at thirty-eight breeding territories but was at just twenty three territories in 1999. *See* 76 Fed. Reg. at 50567. FWS has recognized that the habitat for the Southwestern Willow Flycatcher along the South Fork of the Kern River is essential to the conservation of the species.

Unfortunately, we recently learned that although the U.S. Army Corps of Engineers (Corps) has used all of the funds dedicated for mitigation they have failed to ensure systematic restoration to support the survival and recovery of the endangered Southwestern Willow Flycatcher due to the ongoing impacts of Isabella Reservoir dam operations in Kern County, California and other projects associated with the dam.

On 3 October 2014 (79 Fed. Reg. 59991), the Western Yellow-billed Cuckoo was listed as threatened under the Endangered Species Act by the U.S. Fish and Wildlife Service (FWS) and the rule went into effect on November 3, 2014. On August 15, 2014, the U.S. Fish and Wildlife Service proposed critical habitat for the Western Yellow-billed Cuckoo, including 2,862 acres of habitat along a 8-mi-long continuous segment of the South Fork Kern River from west of the town of Onyx downstream to Lake Isabella, and includes the upper 0.6 mi of Lake Isabella (79 Fed. Reg. 48547). In addition to documented breeding territories, the site provides a stopover area or movement corridor between Western Yellow-billed Cuckoos breeding on the Colorado River and the Sacramento River. The comment period was extended and comments will be accepted

¹ *See, e.g., Southwest Center for Biological Diversity et al., v. Klasse*, Case No. CIV S-97-1969 GEB JF, 1999 WL 34689321 (E.D. Cal. April 1, 1999) (the Center (under our former name, Southwest Center for Biological Diversity) previously challenged the Corps’ operations of the Lake Isabella Dam regarding impacts to the endangered Southwestern Willow Flycatcher and its critical habitat).

through January 12, 2015 with a final designation subsequently occurring. 79 Fed. Reg. 67154 (Nov. 11, 2014).

Conservation groups support the designation of critical habitat for the Western Yellow-billed Cuckoo in this area and agree the evidence indicates additional protection is urgently needed for the western distinct population segment of the Yellow-billed Cuckoo and its remaining breeding and stopover habitat in this area. However, the FWS's critical habitat proposal for the Western Yellow-billed Cuckoo does not provide all of the necessary habitat protection for the imperiled bird species, whose numbers have plummeted in recent decades. The proposed rule does not protect all currently occupied habitat, does not protect stopover, foraging and sheltering habitat, does not provide for early to mid-successional habitat, nor does the proposed rule designate enough habitat for the bird's future recovery by limiting designations to blocks of riparian habitat greater than 200 acres in extent and 325 feet in width.

Conservation groups recommend that:

1. all current and recently (within past 50 years) occupied habitat be designated by FWS as critical habitat;
2. FWS identify and designate critical habitat for stopover, foraging and sheltering habitat;
3. FWS identify and designate critical habitat for additional areas of unoccupied areas with the restoration potential to form large blocks of suitable nesting cuckoo habitat 50 acres or larger;
4. FWS prohibit use of pesticides in critical habitat,
5. FWS heavily regulate use of herbicides in critical habitat, and
6. FWS identify and designate critical habitat along the cuckoo's migratory pathways in order to address the threat of collisions with vehicles, communications towers, wind turbines, and other tall structures.

Protecting habitat for the Western Yellow-billed Cuckoo will have many additional benefits for other wildlife that depend on healthy riparian systems and will have tangible economic benefits that need to be balanced against other uses, particularly those that threaten to degrade cuckoo habitat. Conservation of cuckoo habitat will provide healthier riparian systems, which in turn will provide enhanced flood control and water quality, as well as additional habitat for other threatened riparian species like the Southwestern Willow Flycatcher.

A Recovery Plan and Regional Planning Are Needed to Provide Protection and Guide Habitat Restoration

To address the lack of adequate regulatory mechanisms to protect the Western Yellow-billed Cuckoo, conservation groups urge FWS to direct the land management agencies whose approvals affect the species and its habitat to undertake the comprehensive planning using a range-wide riparian management environmental impact statement to ensure that habitat loss and degradation is not allowed to continue in the future. Similarly, agencies involved in water management and planning future water developments need to undertake a similar planning process to minimize existing impacts and steer future developments away from occupied habitat and restoration areas.

As the proposed rule pointed out on page 61633 “Western yellow-billed cuckoos require large blocks of habitat for breeding. Home ranges are large...” Recent studies in Arizona and California show that the cuckoos use large home ranges of 204 acres and 95 acres respectively, and another found ranges averaging 123 acres. On the Verde River in Arizona occupied sites were wooded riparian habitats at least 325 feet in width. FWS also finds that the cuckoo is currently found in the largest contiguous and least-fragmented remaining habitat patches (p. 61659) and that the species seldom uses patches smaller than 325 x 975 feet.

The draft proposal stated:

“Conservation actions, such as habitat protection and restoration described above, have strong potential to be beneficial to the species by increasing the amount of available habitat and patch size. However, these efforts offset only a small portion of past losses and degradation...”

But, we are concerned by text on page 61662 stating:

“it is unlikely that large areas of suitable habitat will naturally regenerate within the range of the species into the future.”

This statement from the rule points to the need for a recovery plan to be developed and implemented as soon as possible that includes a more aggressive water management habitat restoration strategy. Therefore, identifying potential large blocks (100 acres or larger) and designating additional protected areas for successional riparian habitat restoration through an inter-agency environmental impact statement needs to be a priority before any new impacts to the species or its critical habitat are authorized or approved by FWS.

Cuckoo breeding habitat can be restored by 1) allowing more natural flow regimes to rivers and creeks, 2) restricting or eliminating livestock grazing along riparian areas, 3) protecting habitat from feral cats, and 4) restricting or eliminating the use of pesticides and herbicides near cuckoo breeding areas. The latter point is especially important in riparian areas where managers are proposing chemical treatments to remove invasive non-native species, rather than the use of physical extraction method that removes the root ball of the exotic species.

Studies, such as those along the San Pedro River in Arizona (Kreuper et al. 2001), where exclusion of cattle from riparian areas led to a dramatic and rapid recovery of forests and local cuckoo populations suggest that similar management techniques may benefit cuckoos. Livestock grazing is a common feature of western riparian areas (Ohmart 1994), with overgrazing common on private lands and seasonal grazing typical of many public lands (e.g., National Wildlife Refuges and National Forest System). Given the significant impact such grazing can have on riparian woodlands, designation of non-grazed sites within public lands, as well as landowner incentives for restoring riparian woodland on private lands would improve riparian habitats in these areas (P. 26 USFS Technical

Conservation Assessment²).

Given the low population of the Western Yellow-billed Cuckoo, restoration of successional habitat is crucial to raise that total and reach recovery goals and eventual delisting. Fortunately, there is great potential for habitat restoration of cuckoo habitat. Partners in Flight Western Working Group has initiated habitat restoration efforts on the lower Colorado River planting riparian vegetation in abandoned farm fields. Monitors found nearly immediate results with significant numbers of nesting cuckoos after only a few years of growth (J. Stanek, personal communication). Southern Sierra Research Station has documented this success.³

There is also great concern about the prospect of negative cumulative effects resulting from federally managed projects in cuckoo habitat. An Oct. 23, 2013 memorandum by Industrial Economics, Inc.⁴ identifies several dozen projects with federal action agencies that are potentially harmful to cuckoo habitat and would likely require formal Sec. 7 consultation. Further, it estimates there would likely be 45 formal consultations per year, 130 technical assistance requests, and 490 informal requests each year; an indication of the ongoing heavy development pressure threatening cuckoo habitat.

In particular, conservation groups recommend adoption of a recovery plan that lays out an additional habitat protection methods to protect and expand cuckoo occupancy and breeding activity in the South Fork of the Kern River in Kern County, California.

Concerns about Protecting Current and Future Critical Habitat of Western Yellow-billed Cuckoo and Southwestern Willow Flycatcher in the Kern River Valley, Kern County, California

The conservation groups are concerned about impacts to the Western Yellow-billed Cuckoo habitat in the South Fork Kern River Valley from the Army Corps of Engineers proposed Isabella Lake Dam Safety Modification Project which were analyzed in the Draft Environmental Impact Statement (DEIS) several years ago. That DEIS fails to properly identify and analyze the significant impacts of the action alternatives on rare, listed, and sensitive species and habitats, including designated and proposed critical habitat essential to the survival and recovery of the endangered Southwestern Willow Flycatcher and does not adequately account for impacts to the newly listed Western Yellow-billed Cuckoo. In addition, the DEIS fails to include a comprehensive identification and analysis of other projects that will have significant cumulative impacts to these same species including, for example, wind and solar power projects in the vicinity and in the flyway corridor for the birds that utilize the Lake Isabella and the Kern River area as critical stops on their migration routes.

The proposed critical habitat of the Western Yellow-billed Cuckoo in the inundation zone of Isabella Reservoir is now proposed for herbicide treatment by the U.S. Forest Service. U.S. Forest Service Kern River Noxious Weed Control Project EA is listed in the

² <http://www.fs.fed.us/r2/projects/scp/assessments/yellowbilledcuckoo.pdf>

³ <https://docs.google.com/file/d/0B5DSBspIcubebEhNa1hkd0FRWXc/edit?pli=1>.

⁴ http://www.fws.gov/sacramento/outreach/Public-Advisories/WesternYellow-BilledCuckoo/docs/20131023_YBC_screening_memo.pdf

latest Schedule of Proposed Actions.⁵ “This project proposes to treat salt cedar and possibly tree of heaven at multiple locations. Treatment will consist of using herbicides where necessary for control of these invasive non-native species. Decision Expected: 05/2015 – Isabella Lake, Upper and lower Kern River where salt cedar and tree of heaven are found - Project Contact Steve Anderson 760-376-3781 x. 680, swanderson@fs.fed.us.” This treatment area is essential habitat for the western distinct population segment (DPS) of the Yellow-billed Cuckoo and should be designated as critical habitat—while control of invasive, non-native species may ultimately improve the habitat quality, the impacts from using herbicides in this area have not been adequately addressed and need to be evaluated for impacts to other non-target species. An analysis of other non-chemical treatments should also be evaluated for effectiveness.

Rosedale-Rio Bravo Water Storage District recently purchased 3,372 acres of the Onyx Ranch that included water rights in the watershed of the South Fork of the Kern River and their activities threaten the Southwestern Willow Flycatcher and Western Yellow-billed Cuckoo habitat in this area.⁶ For example, the District is seriously considering diverting surface water from the South Fork of the Kern River and groundwater from the Kern River Valley to recharge and storage locations in the San Joaquin Valley. Groundwater overdraft is a serious problem in California and riparian forests die quickly in areas where groundwater is depleted.

Essential habitat for the western distinct population segment (DPS) of the Yellow-billed Cuckoo (*Coccyzus americanus*) is found in the riparian forest of the South Fork of the Kern River and most frequently in the successional riparian forest in the South Fork Wildlife Area and reservoir drawdown area that is managed by Sequoia National Forest; all of this habitat should be protected as critical habitat.

Since the discovery of leaks in the auxiliary dam of Isabella Reservoir during the summer of 2005, drawdowns combined with drought have reduced the reservoir to a low of 45,418 acre feet of water with 9,007 surface acres of reservoir bottom exposed. This is a 79% reduction from the reservoir’s maximum surface area of 11,400 acres.⁷

Exposing the reservoir bottom has created a primary seral stage successional willow-cottonwood-tamarix forest where the cuckoo and other riparian obligate species will thrive within just a few years. The preferred breeding habitat of the Western Yellow-billed Cuckoo is mid-successional willow dominated forest.⁸ The drawdown area of the reservoir has recreated the natural succession of riparian vegetation along the once meandering South Fork of the Kern River, where meandering has been missing from the ecosystem for many years due to human manipulation.

⁵ <http://data.ecosystem-management.org/nepaweb/current-sopa.php?forest=110513>.

⁶ <http://www.rrbwsd.com/onyx-ranch>

⁷ See Rowe, R.C., 2012. Modified chart from Isabella Dam Lake Area/Capacity Table. Kern River Valley Revitalization, Kernville, CA.

http://krvr.org/components/com_joomlaboard/uploaded/files/Isabella_Dam_Lake_Area_Capacity_Table_5_15_2012.pdf

⁸ See Laymon, S. A., P. L. Williams, and M. D. Halterman 1997. Breeding status of the yellow-billed cuckoo in the South Fork Kern River Valley, Kern County, California: Summary report 1985-1996, Prepared for USDA Forest Service, Sequoia National Forest, Cannell Meadow Ranger District, Kernville, CA.

Researchers from the Southern Sierra Research Station discovered a pair of cuckoo nesting within the mid-successional vegetation along the South Fork of the Kern River west of the South Fork Wildlife Area in the summer of 2014.⁹ Surveys conducted in 2009 showed that 84% of the cuckoo detections were in the location where the river braids in the wildlife area.⁶ Only 16% of the 69 cuckoos detected during the field season were found upstream of the South Fork Bridge on Sierra Way, where the forest has become decadent along the single river channel corralled by three bridges: Sierra Way, Fay Ranch Road, and Doyle Ranch Road. Due to legal restrictions that maintained the reservoir peak at 350,00 acre feet or below for 10 years, the mid-successional forest recorded an almost 80% increase in the number of cuckoos from 14 individuals in the 1985-87 season to 69 individuals in 2009.^{10, 11}

The Army Corps of Engineers proposes to allow the refilling of the reservoir after 2020. In the ensuing years, critical successional habitat would disappear creating the conditions that would further threaten the Western Yellow-billed Cuckoo and other riparian obligate nesters along the South Fork of the Kern River. Under the terms of the 2005 mitigation required of the Corps for the flooding of the South Fork Wildlife Area and destruction of Southwestern Willow Flycatcher habitat, over 3,000 acres of habitat was purchased upstream. The restoration toward a meandering river was not part of the mitigation package, but should have been. In contrast, retaining the large contiguous willow-cottonwood riparian forest as a climax forest is not the best strategy for the conservation or recovery of the threatened cuckoo or the endangered flycatcher.

Before the 2013 purchase of the South Fork Valley portion of Onyx Ranch upstream of the reservoir and the 2005 Army Corps of Engineers mitigation lands by Rosedale-Rio Bravo Water Storage District, significant channelizing and well drilling was done by the previous owners of the property, Renewable Resources Group, reducing the flow of the river to downstream users. Rosedale-Rio Bravo's new proposal to export water from the South Fork Kern River does not bode well for the wildlife or the residents of the ranching valley.

Additional Recommendations to Protect Current and Future Critical Habitat of Western Yellow-billed Cuckoo and Southwestern Willow Flycatcher in the Kern River Valley, Kern County, California

Once the Corps has fully analyzed the Dam Safety Modification Project proposal impacts

⁹ See personal communication JE Stanek – Southern Sierra Research Station.
http://www.southernsierraresearch.org/Information/ReportsAndPublications/SSRS_Reports/YBCU_Kern/SSRS_Kern_YBCU_2014_Report.pdf

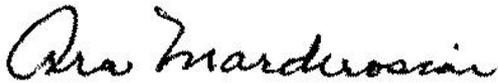
¹⁰ See Henneman, C. 2010. Yellow-billed cuckoos in the South Fork Kern River Valley in 2009. Final report prepared for the U.S. Fish and Wildlife Service, Sacramento Field Office. Sacramento, CA
http://www.southernsierraresearch.org/Information/ReportsAndPublications/SSRS_Reports/YBCU_Kern/SSRS_Kern_YBCU_2009_Report.pdf

¹¹ See Laymon, S. A., and M. D. Halterman 1989. A proposed habitat management plan for yellow-billed cuckoos in California. USDA Forest Service General Technical Report PSW-110:272-277.
http://www.fs.fed.us/psw/publications/documents/psw_gtr110/psw_gtr110_f_laymon.pdf

to Southwestern Willow Flycatcher, in light of the listing of the cuckoo, and the need to protect designated and proposed critical habitat for these species, we believe that additional mitigation measures will be required. The Conservation groups suggest that acquisition of the 3,327-acre portion of the Onyx Ranch by the Army Corps of Engineers and U.S. Forest Service, with significant endowment for the construction of causeways along Fay Ranch Road and Sierra Way would enable the engineered meander of the river that creates mid-successional habitat. The conservation groups urge the Corps to move quickly to secure these lands as soon as possible to prevent irrecoverable population crashes and avoid the devastating impacts that would occur if the proposed water exports go forward.

Because the exportation of water from the South Fork Kern River by Rosedale-Rio Bravo Water Storage District would negatively impact businesses, residents, and biological diversity, equally, the purchase of this portion of the Onyx Ranch should be considered as a priority mitigation action for the proposed Dam Safety Modification Project.

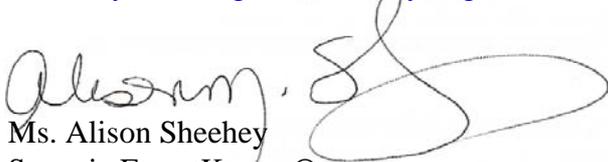
Respectfully submitted,



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