(see Issue 30). As discussed later (Issue 35), because critical habitat is not being designated with this rule, comments regarding critical habitat will be addressed during subsequent actions regarding critical habitat.

*Issue 34*: Requests were received to be on a mailing list for all actions relating to this issue or to be provided personal notification of a final decision.

Service Response: The Service tries to maintain mailing lists for specific issues whenever possible. However, when large numbers of parties request to be on such lists, it becomes logistically and financially unfeasible to mail information to each party. This issue is one of those, and the Service must rely to some degree on mass communication forums like news releases, public notices in newspapers, and publications in the Federal Register.

*Issue 35*: Numerous comments were received regarding critical habitat.

Service Response: Critical habitat for E. t. extimus is not being designated with this rule; therefore, the above issues are not addressed here. Designation of critical habitat is being deferred while the Service further considers the extent to which designation is appropriate. Issues pertaining to this designation will be addressed when a final decision is made with regard to the critical habitat proposal.

*Issue 36*: Numerous comments were received regarding recovery of E. t. extimus, including: the Service has no recovery plan for *E. t. extimus;* the proposed rule failed to identify recovery goals for habitat, flycatcher numbers, and flycatcher distribution; the proposed rule failed to identify what actions will be used to achieve recovery; a recovery plan should address control of cowbird parasitism, nest damage by livestock, tamarisk eradication, wintering habitat, monitoring populations, protection of public and private lands from fire; cowbird parasitism cannot be addressed by listing and designating critical habitat; cowbirds are not easily controlled without sacrificing flycatchers and/or impacting habitat; the proposed rule contained no livestock managing strategy; rotating livestock will allow habitat enhancement/recovery; the factors affecting riparian habitats are numerous and complex; failure to address all could be futile or have damaging effects.

*Service Response*: Section 4(f) of the Act authorizes the Service to develop and implement recovery plans for listed species, not species that are proposed for listing. For *E. t. extimus*, this process therefore begins with the effective date

of listing. In accordance with section 4(f)(B) of the Act the recovery plan process will address actions necessary to achieve conservation and recovery of E. t. extimus, will identify measurable criteria by which recovery (i.e., the point at which protection under the Act is no longer necessary) can be gauged, and will identify the time and costs required to achieve recovery. The specific issues identified above will be considered in developing a recovery plan, and that plan will be available for public review and comment prior to adoption. Monitoring species is frequently an element of recovery plans, and is also required by section 4(g) of the Act for any species deemed to be recovered.

*Issue 37*: Several commenters questioned the motivations of the petitioners in requesting the listing, and others apparently believed the petitioners authored the listing proposal. Several commenters noted that the petition contained inaccuracies, and therefore no listing proposal should have resulted.

Service Response: The Service cannot speak for the petitioners' motivations in requesting listing of E. t. extimus. The Service judged the petition solely on the scientific information it contained. Inaccuracies were found in the petition, but on the whole the Service determined that it presented substantial information indicating that listing may be warranted. The listing proposal was authored by the Service, not the petitioners. The Service developed its proposal not from the petition, but from information gained from journal publications, agency reports, and the general public's responses to several information solicitations. This status review process had resulted in the Service designating E. t. extimus a category 1 candidate species prior to the petition being received. That designation indicated that the Service had sufficient information to support a listing proposal but did not publish a proposal immediately because it was dealing with listing actions of higher priority. Information presented by the petitioners that the Service did not already possess was checked for accuracy; information that could not be confirmed, or was found to be inaccurate, was not used.

*Issue 38*: The Service is required to purchase interest in land or water for implementation of the Act; this violates the U.S. Constitution.

Service Response: Section 5 of the Act directs the Secretary to use land acquisition and other authorities of the Fish and Wildlife Act of 1956, as amended, the Fish and Wildlife

Coordination Act, as amended, and the Migratory Bird Conservation Act, as appropriate. The Secretary is authorized, but not required, to acquire interest in land or water to conserve threatened and endangered species. The Service does not carry out these authorities in violation of the U.S. Constitution. The Service does not acquire all lands designated as critical habitat for a listed species, and does not develop critical habitat designations based on land ownership or interest of landowners in purchasing or selling properties. It is the Service's policy to acquire property only on a voluntary basis from willing sellers.

*Issue 39*: Land use outside occupied/ critical habitat will be adversely impacted.

*Service Response:* Federal actions that take place outside occupied habitat or critical habitat, but that may affect *E. t. extimus,* will be subject to consultation between the action agency and the Service in accordance with section 7 of the Act. Exclusively private actions are unaffected by listing and/or designation of critical habitat, provided they do not result in violation of section 9 of the Act (*e.g.*, take of the species).

*Issue 40*: Listing (regardless of critical habitat) will have adverse impacts on local economy; economic impacts of listing were not addressed; the Act requires the Service to consider impacts on other wildlife species and social and economic impacts prior to listing.

Service Response: Consideration of economic effects is required for designation of critical habitat. The Act requires that species listing decisions be based solely on the best scientific and commercial information available, which precludes consideration of social or cultural impacts or impacts on other species. (See section 4(b)(1)(A) of the Act). The Service anticipates no significant impacts on other native wildlife species as a result of listing, with the probable exception of the brown-headed cowbird.

*Issue 41*: Who initiated, performed, and paid for studies along the Kern River?

Service Response: Reports on studies done on the Kern River were published by Harris *et al.* (1986), Harris *et al.* (1987), Whitfield (1990), and Harris (1991). Specific information on project participants, funding sources, and cooperators can be found in those sources. The Service understands that monitoring and cowbird control are being continued by the Kern River Research Center and The Nature Conservancy, with funding assistance from the State of California and the Service.