



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In reply refer to:
81420-2009-TA-0195-6

MAY 6 2009

Mr. Peter Buck
Natural Resource Manager
Sacramento Area Flood Control Agency
1007 7th Street, 7th Floor
Sacramento, California 95814

Subject: U.S. Fish and Wildlife Service Review of the Natomas Levee Improvement Program Landside Improvements Project Mitigation and Monitoring Plan and Programmatic Long-Term Management Plan Sacramento and Sutter Counties, California

Dear Mr. Buck:

This letter is in response to your April 30, 2009 (received in our office on May 1, 2009), memo to the U.S. Fish and Wildlife Service (Service) requesting approval of the Natomas Levee Improvement Program Landside Improvements Project (proposed project) Phase 2 Mitigation and Monitoring Program (MMP) and Programmatic Long-Term Management Plan (LTMP) and accompanying Site Specific Management Plans (SSMP). The October 9, 2008, biological opinion (Service file # 81420-2008-F-0195-5) contained a Term and Condition which instructed the Corps of Engineers (Corps) and Sacramento Area Flood Control Agency (SAFCA) to have the following documents completed and approved by the Service prior to May 1, 2009: drainage easement language for the GGS/Drainage Canal; Mitigation and Monitoring Plan and Long-Term Management Plan; encumbrances on a portion of the District Assessment Fee; and a contract with Natomas Central Mutual Water Company (NCMWC) to provide reliable water for the GGS/Drainage Canal and managed marsh. The primary concern and mandate of the U.S. Fish and Wildlife Service (Service) is the protection of federally-listed species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Drainage Easement Language for GGS/Drainage Canal

The SAFCA's attorney provided draft language of the easement in September 2008. The Service provided initial comments within the same month. The Service received a revised draft of the

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easement language in January 2009. Meetings between the Service, SAFCA, Department of Interior Solicitor, Fran Layton (SAFCA's attorney), California Department of Fish and Game (CDFG), and the Corps resulted in the language of the drainage easement which is currently an appendix in the LTMP. Because the Service and CDFG had concerns over the level of protection provided to the GGS/Drainage Canal with the drainage easement, SAFCA agreed to provide additional compensation in the form of managed marsh near Fisherman's Lake which would have a conservation easement on it. Given this, the Service approves the drainage easement of the GGS/Drainage Canal.

Mitigation and Monitoring Plan and Long-Term Management Plan

The Service received the Phase 2 MMP on December 29, 2008. We provided comments to SAFCA and EDAW (SAFCA's consultant) on February 13, 2009. A draft final copy was e-mailed to the Service on April 17, 2009. The Service has found that all of their comments were addressed and approves the Phase 2 MMP.

The Service received the Programmatic LTMP on March 16, 2009. The Service provided comments on the draft Programmatic LTMP on March 31, 2009. A draft final copy was e-mailed to the Service on April 17, 2009. The Service has found that all of their comments were addressed and approves the Programmatic LTMP. Included within the Programmatic LTMP are SSMPs. Currently, the Service has only reviewed and commented on the upper GGS/Drainage Canal SSMP. One of the Service's comments on the SSMP is that "take" of the giant garter snake (*Thamnophis gigas*) is likely to occur due to the management practices described within it. The Service and SAFCA have decided it would be appropriate to analyze the effects to giant garter snakes due to the maintenance activities as part of the Phase 3 biological opinion. The Service approves the SSMP for the GGS/Drainage Canal. While SAFCA has not provided a SSMP for the Brookfield Rice Fields, they have agreed to provide a draft copy of this SSMP by June 1 for the Service to review and comment on.

Encumbrances on District Assessment Fee

The intent of this term and condition was to ensure long-term funding for the conservation measures that SAFCA has included as part of their project description. In April 2007, a Consolidated Capital Assessment District (CCAD) was formed. The purpose is to fund the local share of the cost of constructing, operating, and maintaining projects necessary to provide the Sacramento area with at least 200-year level of flood protection. Assessments will be collected through 2037. For Brookfield rice and managed marsh created during Phase 4 of the project, SAFCA will create a nonwasting endowment in 2009. The SAFCA will provide funding for Natomas Basin Conservancy (TNBC) for yearly maintenance and operation from the CCAD special assessment through 2037. After this, TNBC will use interest from the endowment account to cover yearly expenses. The endowment account will be fully funded according to a Property Analysis Record by the year 2038. Funding for operations and maintenance (including water delivery costs) for Reclamation District (RD) 1000 and NCMWC for the GGS/Drainage Canal will be paid from the CCAD assessments through 2037 and from SAFCA's Operation and

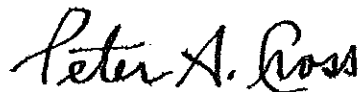
Maintenance Assessment District assessments thereafter. To ensure timely payment for RD 1000 and NCMWC for their services, SAFCA will maintain reserve accounts with balances two times the annual estimated amounts or enough to provide two years of funding for their services. The Service feels that SAFCA has demonstrated the ability to provide long-term funding for the conservation measures identified in the Phase 2 project description. The Service does note however, that the assumption made in the January 28, 2009, memorandum to Tim Washburn of SAFCA, from Economic & Planning Systems, Inc. that an interest accrual averaging 6 percent annually is too high. Compensation banks which are approved by the Service use an interest rate of 4.5 percent and CDFG has recently begun recommending an interest rate of 1.6 percent.

Contract with NCMWC to provide reliable water for the GGS/Drainage Canal and Managed Marsh

The SAFCA provided a draft memorandum of understanding with NCMWC which describes the understandings of SAFCA and NCMWC. The NCMWC is made up of shareholders who are landowners within the Natomas Basin. Shareholders are provided water at cost. As a landholder in the Natomas Basin, SAFCA and Sacramento County will become shareholders in the water company. The SAFCA will exercise their right to water and in order to supply water to the upper and lower GGS/Drainage Canal, to Brookfield rice property, and to managed marsh created along Fisherman's Lake. As a landowner and shareholder SAFCA does not have to enter into a contract with NCMWC and therefore SAFCA has demonstrated to the Service their ability to acquire water for their compensation lands.

If you have any questions regarding this letter, please contact Jennifer Hobbs, or Jana Milliken, the Sacramento Valley Branch Chief, at 916-414-6600.

Sincerely,



Peter A. Cross
Deputy Assistant Field Supervisor

cc:

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