



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-F-0890-R006

AUG 10 2012

Ms. Alicia E. Kirchner
Chief, Planning Division
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, California 95814

Subject: Reinitiation of Formal Consultation on the Natomas Levee Improvement Program's Landside Improvements Phase 3 Project, Sacramento and Sutter Counties, California

Dear Ms. Kirchner:

This is in response to your August 1, 2012, request to reinitiate formal consultation with the U.S. Fish and Wildlife Service (Service) for a sixth time on the Natomas Levee Improvement Program (NLIP), Landside Improvements Project, Phase 3 (Phase 3 Project) in Sacramento and Sutter Counties, California. Your request was received in our office on August 1, 2012. The Phase 3 biological opinion (81420-2009-F-0890-1) was completed on September 28, 2009 and tiered off a programmatic biological opinion (81420-2008-F-0195-5) for the entire NLIP project that was issued on October 9, 2008. The Corps is requesting reinitiation on the Phase 3 Project due to the addition of waterside work related to reconfiguration of an existing outfall structure and change in placement of soil stockpiles for Pump Plant Number 2 (Pump Plant 2). These actions have not been previously analyzed. At issue are effects to the federally-threatened giant garter snake (*Thamnophis gigas*)(snake) and federally-threatened delta smelt (*Hypomesus transpacificus*).

The Service concurs that the installation of the Pump Plant 2 outfall structure on the waterside of the levee is not likely to adversely affect the delta smelt based on the specific avoidance measures and low probability that they will be present in the project area during construction. The project is near the upper end of delta smelt known occurrences. The in-water work will occur on a substrate that is composed of fine sediments. Because delta smelt spawn on sand or gravel substrates, this area does not represent potential delta smelt spawning habitat; therefore, the change of substrate from fine sediment to riprap is not likely to adversely affect delta smelt spawning habitat. The Sacramento Area Flood Control Agency (SAFCA) proposes to conduct all of the construction between July 1 and October 31 which would avoid the upstream spawning

migration of delta smelt, occurring primarily between January and May. It is not expected that delta smelt would be in the area during the construction.

This reinitiation addresses effects to the snake and is issued under the authority of section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). While the revised Phase 3 Project will result in additional temporary effects to the snake, the Service has analyzed the take associated with the project description changes and determined that this project, as amended, will not jeopardize the continued existence of the snake.

To provide ease of reading, language changed within a paragraph from the original biological opinion will be underlined. Therefore, the Phase 3 biological opinion is now amended as follows:

Page 2: Add the following at the end of the **CONSULTATION HISTORY FOR PHASE 3** section:

August 1, 2012. The Corps reinitiated consultation for the Phase 3 Project and provided biological data in two AECOM memorandums dated July 24, 2012, and July 30, 2012.

Page 15: Add the following text after the first paragraph under **Reconstruction of Pumping Plant Number 2**, in the Project Description:

The Pump Plant 2 construction footprint includes three soil stockpile areas. These stockpile areas include: (Area 1) a 1.54 acre triangle area located immediately south of the North Drainage Canal, north of the new Upper Elkhorn Canal, and west of the new Upper Giant Garter Snake (GGS)/Drainage Canal; (Area 2) a 2.55 acre area located just north of Prichard Lake Road and west of P6 Drain (the area used as stockpile and staging during Phase 2); and (Area 3) a 1.27 acre area located on the landside levee slope, just south of Prichard Lake Road and west of the new operations and maintenance road. The soil at Area 3 would be temporarily stockpiled and reused during the construction of Prichard Pump Plant.

Page 41: Add the following paragraph under Giant garter snake Direct Effects due to Phase 3 Construction, in the Effects of Proposed Action Section:

Changes to the soil stockpile area for construction of Pump Plant 2 will temporarily disturb 5.36 acres of giant garter snake upland habitat. Conservation measures described in the biological opinion will reduce effects to the giant garter snake. The 5.36 acres will be temporarily unavailable for use by the snake as overwintering habitat. However, once SAFCA has completed placement of the soil, the area will be regraded and restored to pre-existing conditions.

Page 45: Change the Giant Garter Snake Incidental Take Statement from:

The Service anticipates that incidental take of the snake will be difficult to detect or quantify for the following reasons: giant garter snakes are cryptically colored, secretive, and known to be sensitive to human activities. Snakes may avoid detection by retreating to burrows, soil crevices,

vegetation, or other cover. Individual snakes are difficult to detect unless they are observed, undisturbed, at a distance. Most close-range observations represent chance encounters that are difficult to predict. It is not possible to make an accurate estimate of the number of snakes that will be harassed, harmed or killed during Phase 3 construction activities (staging areas, work on canal banks, soil borrow areas, and vehicle traffic to and from borrow areas) or long-term maintenance of the GGS/Drainage Canal and Brookfield rice. In instances when take is difficult to detect, the Service may estimate take in numbers of species per acre of habitat lost or affected as a result of the action. Therefore, the Service anticipates that all giant garter snakes inhabiting 60.18 acres of aquatic and 73.81 acres of upland habitat may be harassed, harmed, or killed, by loss and destruction of habitat due to construction of Phase 3. The Service also anticipates that all giant garter snakes inhabiting the 2.2-mile-long upper GGS/Drainage Canal may be harmed, harassed, or one giant garter snake killed due to RD 1000 annual maintenance of the canal and adjacent uplands per year.

To:

The Service anticipates that incidental take of the snake will be difficult to detect or quantify for the following reasons: giant garter snakes are cryptically colored, secretive, and known to be sensitive to human activities. Snakes may avoid detection by retreating to burrows, soil crevices, vegetation, or other cover. Individual snakes are difficult to detect unless they are observed, undisturbed, at a distance. Most close-range observations represent chance encounters that are difficult to predict. It is not possible to make an accurate estimate of the number of snakes that will be harassed, harmed or killed during Phase 3 construction activities (staging areas, work on canal banks, soil borrow areas, and vehicle traffic to and from borrow areas) or long-term maintenance of the GGS/Drainage Canal and Brookfield rice. In instances when take is difficult to detect, the Service may estimate take in numbers of species per acre of habitat lost or affected as a result of the action. Therefore, the Service anticipates that all giant garter snakes inhabiting 60.18 acres of aquatic and 79.17 acres of upland habitat may be harassed, harmed, or killed, by loss and destruction of habitat. The Service also anticipates that all giant garter snakes inhabiting the 2.2-mile-long upper GGS/Drainage Canal may be harmed, harassed, or one giant garter snake killed due to RD 1000 annual maintenance of the canal and adjacent uplands per year. Upon implementation of the Reasonable and Prudent Measures, Terms and Conditions, and the Conservation Measures considered herein, incidental take within the Phase 3 Project will be exempt from the prohibitions described under section 9 of the Act.

All other contents of the October 9, 2008, Biological Opinion remain the same.

REINITIATION – CLOSING STATEMENT

This concludes formal consultation with the Corps on the Natomas Levee Improvement Program, Landside Improvements Project Phase 3. As provided in 50 CFR 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the proposed action may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to listed species or


Ms. Alicia E. Kirchner

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critical habitat that was not considered in this opinion; or (4) a new species or critical habitat is designated that may be affected by the proposed action.

If you have any questions regarding this biological opinion on the Natomas Landside Improvements Project, please contact Jennifer Hobbs, Senior Fish and Wildlife Biologist at (916) 414-6541 or Kellie Berry, Chief, Sacramento Valley Division at (916) 414-6645.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan K. Moore". To the left of the signature is a small, stylized initial or mark.

Susan K. Moore
Field Supervisor

cc:

Kim Turner, Bay Delta Field Office, Sacramento, CA
Elizabeth Holland, Corps, Sacramento, CA
Amy Kennedy, CDFG, Sacramento, CA
Peter Buck, SAFCA, Sacramento, CA
Kelly Holland, AECOM, Sacramento, CA