



United States Department of the Interior



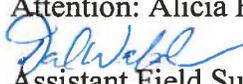
FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In reply refer to:
08ESMF00-2012-F-0125-1

JAN 10 2012

Memorandum

To: San Joaquin River Restoration Program, Mid-Pacific Regional Office
Bureau of Reclamation, Sacramento, California
Attention: Alicia Forsythe, Program Manager

From: 
Assistant Field Supervisor, Sacramento Fish and Wildlife Office
Sacramento, California

Subject: Insufficient Information to Begin Formal Consultation Under Section 7(a)(2) of the Endangered Species Act for the San Joaquin River Restoration Program

This letter is in response to your November 30, 2011, request for formal consultation, pursuant to section 7(a)(2) of the Endangered Species Act, as amended (16 U.S.C. §1531 *et seq.*) (Act), on the San Joaquin River Restoration Program (Program), which was received by the U.S. Fish and Wildlife Service (Service) on November 30, 2011. The consultation concerns the potential effects of the Program on a number of federally-listed as threatened species, including Delta smelt (*Hypomesus transpacificus*), succulent owl's-clover (*Castilleja campestris* ssp. *succulent*), Hoover's spurge (*Chamaesyce hooveri*), Colusa grass (*Neostapfia colusana*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), vernal pool fairy shrimp (*Branchinecta lynchi*), valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), California tiger salamander (*Ambystoma californiense*), giant garter snake (*Thamnophis gigas*), and federally-listed as endangered species, including palmate-bracted bird's-beak (*Cordylanthus palmatus*), hairy Orcutt grass (*Orcuttia pilosa*), Greene's tuctoria (*Tuctoria greenei*), Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Leopardurus pachardi*), blunt-nosed leopard lizard (*Gambelia sila*), Least Bell's Vireo (*Vireo bellii pusillus*), Fresno kangaroo rat (*Dipodomys nitratooides exilis*), San Joaquin woodrat (*Neotoma fuscipes riparia*), riparian brush rabbit (*Sylvilagus bachmani riparius*), San Joaquin kit fox (*Vulpes macrotis mutica*), and the candidate for Federal listing Western Yellow-billed Cuckoo (*Coccyzus americanus occidentalis*). The Program is within designated critical habitat for Delta smelt, succulent owl's-clover, Hoover's spurge, Colusa grass, San Joaquin Valley Orcutt grass, hairy Orcutt grass, Greene's tuctoria, Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, vernal pool tadpole shrimp, and California tiger salamander.

This response is based on the information provided in the *Programmatic Biological Assessment* (PBA), dated November 2011, and is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The Service has not received all the information necessary to initiate formal consultation on this project, as outlined in the regulations governing interagency consultations (50 CFR §402.14). To complete the initiation package, we will require the following information:

In **Table 7-2**, page 7-3 through 7-4, in Chapter 7 of the PBA, under the headings of *Project-Level Actions – Conclusion* and *Program-Level Actions – Conclusion*, the determination of effects for all listed species is ‘not likely to adversely affect’. This appears to contradict many of the effects for the Project and Program Level Actions given in Chapter 6 *Effects*, for these same species; e.g., California tiger salamander, blunt-nosed leopard lizard, valley elderberry longhorn beetle, etc..

The Service requests that you provide a clear, unambiguous effects determination for each of the listed species that the Program may affect, including ensuring consistency between **Table 7-2** and the effects analysis presented in Chapter 6. If you determine that the Program, at both the Project and Program level of action, will have no effect on a listed species, then there is no need to include that species for effects analysis in the PBA. If you determine that the Program at either the Project and/or Program level may effect, but through implementation of avoidance and minimization measures will not adversely affect the species, and you predict that no take under the definition of the Act will likely occur, then you may request concurrence from the Service with that determination. If you determine that the Program at either the Project and/or Program level will likely result in take as defined by the Act, then a determination of may affect, likely to adversely affect is warranted.

Until we receive clarification on the effects determinations, the Service cannot begin the formal consultation process for the Program. We will notify your office when we receive this additional information; our notification letter will also outline when we expect to complete the formal consultation and begin writing a programmatic biological opinion for the Program.

We appreciated meeting on December 20, 2011 with Michelle Banonis of your staff regarding these issues. We anticipate a continuing dialog with U.S. Bureau of Reclamation personnel during the consultation process. If you have any questions or concerns about this consultation please contact Rocky Montgomery, Senior Staff Biologist, or Mark Littlefield, Chief, Watershed Planning Branch, at (916) 414- 6600.

cc:

Mr. Robert Clarke, U.S. Fish and Wildlife Service, Sacramento, CA
Ms. Jennifer Norris, U.S. Fish and Wildlife Service, Sacramento, CA
Ms. Maria Rea, National Marine Fisheries Service, Sacramento, CA
Ms. Rhonda Reed, National Marine Fisheries Service, Sacramento, CA
Mr. Gerald Hatler, California Department of Fish and Game, Fresno, CA