



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
 Carlsbad Fish and Wildlife Office
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In Reply Refer to:
 FWS-IMP-4265.3

JAN 10 2006

Memorandum

To: Regional Director, Lower Colorado Region,
 Bureau of Reclamation, Boulder City, Nevada
 (Attn: Environmental Compliance Group Manager)

From: Assistant Field Supervisor, Carlsbad Fish and Wildlife Office 
 Fish and Wildlife Service, Carlsbad, California

Subject: Request for Confirmation of Conference Opinion (1-6-96-F-12) as a Biological
 Opinion regarding the Effects of the All-American Canal Lining Project on the
 Threatened Peirson's Milk-vetch (*Astragalus magdalenae* var. *peirsonii*)

This responds to your letter and attachment dated September 9, 2004, regarding the subject request, which was received by this office on September 13, 2004. A second letter and attachments dated December 22, 2005, were received by this office on December 23, 2005. We also received additional information related to your request that was provided to us by the Imperial Irrigation District (IID) on your behalf on November 4, 2005.

Based on our review of the above information, we have determined that no significant new information has been developed and no significant changes to the proposed Federal action have been made that would alter the content of our biological/conference opinion of February 8, 1996, on the effects of the subject action on the federally threatened Peirson's milk-vetch. On that basis, we are confirming the adoption of the subject conference opinion as a biological opinion for the Peirson's milk-vetch in accordance with section 7 of the Endangered Species Act, as amended by the information presented below.

The effects of the subject action on the federally endangered Yuma clapper rail (*Rallus longirostris yumanensis*) and endangered razorback sucker (*Xyrauchen texanus*) also were included in the February 8, 1996, biological/conference opinion. Because none of the re-initiation criteria at 50 CFR 402.16 have been triggered, the section 7(a)(2) analysis for these species in that opinion is still valid. The flat-tailed horned lizard (*Phrynosoma mcallii*) also was addressed in the 1996 opinion; it remains a proposed species at this time.

This document together with the February 8, 1996, biological/conference opinion constitute our biological opinion on the effects of the subject action on the milk-vetch, rail, and sucker.

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Consultation History

On February 8, 1996, the Fish and Wildlife Service (Service) issued a biological/conference opinion to the Bureau of Reclamation (Reclamation) for the subject action that addressed the Peirson's milk-vetch, Yuma clapper rail, razorback sucker, and flat-tailed horned lizard. In October 1998, the Peirson's milk-vetch was listed as threatened (63FR53596). Between February 1996 and 2002, the Service was not involved with additional planning activities until after the State of California provided funding for the project in 2002.

On January 27, 2004, the Service participated in a field tour of the project site conducted by IID. This field meeting provided the opportunity for staffs of the Service, Reclamation, and California Department of Fish and Game who were new to the project to become familiar with the canal facilities, the project proposal, Peirson's milk-vetch survey requirements, and the proposed critical habitat for the species that included a subunit along the existing and proposed canal alignment.

On September 13, 2004, the Service received Reclamation's request for confirmation of the conference opinion as a biological opinion. At that time we did not have adequate information to support the feasibility of the Environmental Commitment Plan (ECP) that called for acquisition and preservation on an acre-for-acre basis for Peirson's milk-vetch habitat to be impacted by the project.

In a memorandum dated November 15, 2004, the Service requested additional information regarding the feasibility of the ECP, and we recommended measures to avoid and minimize impacts to the milk-vetch including: redistribution of the spoil sand such that it is incorporated into the natural dynamics of the dune system, completion of all disturbance of potential Peirson's milk-vetch habitat outside the growth and flowering period for this species (i.e., avoid soil disturbing activities following the first fall rains until seeds have set which generally occur starting November 1 through April 30), and salvage of seeds (to a depth of 10 cm) from the project area prior to disturbance for redistribution once the project is complete.

In a memorandum dated January 25, 2005, Reclamation indicated that the information requested above would be provided to the Service once design of the project was complete. On November 4, 2005, the IID provided the Service with the information as described above. This was followed by Reclamation's second request to confirm the conference opinion for the milk-vetch as a biological opinion dated December 22, 2005. This request included attachments showing the proposed project's limits of disturbance in response to our request.

Updated Project Description

Changes have come about as a result of the refinement of the project design. The new canal will parallel the existing canal as previously described for Reach 1A on the eastern side of the

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Algodones Dunes. The new canal will be located on the north side, but closer to the existing canal than previously described, along the northern section of Reach 1B. The canal will cross over to the south side of the existing canal part way along Reach 1B, but it will again be placed immediately adjacent to the existing canal in this area. Two aggregate sources have been identified and are not located within Peirson's milk-vetch habitat. These changes and clarifications were provided in the packet we received from IID on November 4, 2005, and in your second letter dated December 22, 2005, including the diagrams of the proposed work area. These changes have reduced the anticipated permanent impacts of 916 acres described in the conference opinion.

Reclamation's September 9, 2004, letter provides the measures included in the ECP that will be implemented to avoid, minimize and offset impacts to the Peirson's milk-vetch as a result of the project, including acquisition of private land to offset losses. The new information provided in your December 22, 2005, letter indicates that the project will result in the permanent loss of 30 acres of milk-vetch habitat. A total of 120 acres will be disturbed temporarily for construction facilities and placement of spoils. IID's ECP provides for an alternative approach to this measure. Their ECP calls for the restoration of habitat within the old canal such that the habitat loss is offset on a greater than acre-for-acre basis. Their proposal calls for restoration of 45 acres within the existing canal to offset the permanent loss of 30 acres of sensitive plant habitat. The surveys conducted for the project indicate a high concentration of sensitive plants, including all 18 individuals of Peirson's milk-vetch located in the area, between the canal alignment and Interstate 8. This area is not likely to be used for off-road activities given the lack of access. This may offer some long-term advantages in the management of this site for sensitive plant species. IID indicated to the Service that once construction is complete they intend to recontour the site to a more natural configuration, place sand in the area that has been recontoured, and distribute seeds that have been collected from the existing plants in the project area. The site may be fenced if necessary to prevent future access. Should emergency conveyance of water through the existing canal area be necessary to bypass a failure in the new canal, IID will actively restore the site as described in their ECP including seed collection and distribution in the area for 5 years following the emergency actions.

Based on the information provided in the conference opinion modified by the above discussion, it is the Service's biological opinion that Reclamation's proposed action (i.e., construction, operation and maintenance of the parallel canal) is not likely to jeopardize the continued existence of the Peirson's milk-vetch because the permanent impacts to milk-vetch habitat have been reduced to 30 acres, and these impacts will be offset by habitat restoration within the existing canal area on a greater than acre-for-acre basis. The techniques used for habitat restoration have been shown to be effective and therefore have reasonable likelihood of being successful. No critical habitat was designated for the Peirson's milk-vetch in the action area (69FR47330), so no adverse modification of critical habitat is anticipated.

The flat-tailed horned lizard has been proposed for listing as a threatened species (58FR62624). Although this proposal was previously withdrawn by the Service, the U.S. District Court of

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Arizona reinstated the proposal on November 17, 2005 (70FR72776). Changes in the project description that may affect the flat-tailed horned lizard and the previous conference opinion will be provided here. IID has provided more specific figures for habitat impacts that will result from project construction now that design is complete. This includes the permanent loss of 500 acres of flat-tailed horned lizard habitat along the length of canal to be lined. An additional 760 acres of habitat would be impacted temporarily by the placement of spoils, staging areas and access routes. It is our understanding from IID that Reaches 1A, 1B, and 3 would not be subject to regular maintenance to maintain them as an emergency conveyance as previously proposed in the project description and would be allowed to return to desert habitat over time. Thus, in the long-term approximately 525 acres that are now within the footprint of the existing canal have the potential to regenerate desert dune or creosote scrub habitat. Reach 2 will be maintained as a reservoir for temporary water storage. Although this is a new feature of the project, it will not materially affect the nature and condition of this segment of the existing canal. All impacts will occur outside the Management Areas identified in the Flat-tailed Horned Lizard Range-wide Management Strategy (FTHLICCC 2003). IID has committed to providing funds to compensate for both permanent and temporary impacts (a total of 1,260 acres) as provided for in the Flat-tailed Horned Lizard Range-wide Management Strategy.

Based on the information provided by IID, the project footprint and project-related activities have been modified slightly, but these changes would not result in significant changes to the Service's previous analysis or conclusions regarding the flat-tailed horned lizard. Therefore, the existing conference opinion still applies for this species, although the incidental take statement does not become effective unless the species is listed and the conference opinion is adopted as a formal biological opinion. You may ask the Service to confirm the conference opinion as a biological opinion issued through formal consultation if the species is listed. This request must be in writing. If the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the conference, the Service will confirm the conference opinion as the biological opinion on the project and no further section 7 consultation will be necessary.

The Service has not been provided with specific information regarding sand and gravel borrow sites relative to flat-tailed horned lizard habitat so no assessment of the impacts of extraction of sand and gravel required for the project to the flat-tailed horned lizard can be made at this time.

Analysis of Extra-territorial Effects

Reclamation's proposed action is close to the Mexican border. Although the project is designed to minimize effects to species, extraterritorial effects may exist. These possible effects and subsequent discussion regarding international cooperation with Mexico are described in a separate document.

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Conservation Recommendations

In furtherance of the purposes of sections 2(c) and 7(a)(1) of the Endangered Species Act that mandate Federal agencies to utilize their authorities to implement programs for the conservation of listed species, we recommend that Reclamation or IID on Reclamation's behalf implement the following actions in addition to those previously described in the conference opinion. These recommendations are discretionary agency activities to minimize or avoid adverse effects of the proposed action on the Peirson's milk-vetch.

The ECP commits to stockpiling of the topsoil for redistribution following construction wherever blading is required. Because it is not possible to identify topsoil in an active dune system as it is in other situations, the measure should require that there be no removal of sand from the dune system and seeds should be collected via a shifting method to a depth of 10 cm. After work is complete, sand and its associated seed bank should be redistributed such that it will be incorporated into the natural dynamics of the active dune system. The Service would like to work with Reclamation and the Bureau of Land Management to identify appropriate locations for the distribution of sand from the project.

1. All disturbance of potential Peirson's milk-vetch habitat should occur outside the growth and flowering period for this species (i.e., avoid soil disturbing activities following the first fall rains until seeds have set which generally occur starting November 1 through April 30). The project could be phased to support this approach.
2. Seed should be salvaged to a depth of 10 cm from the project area prior to disturbance (locations are known based on the surveys). We understand from IID that some seed collection was completed this year.
3. Reduce the risk of spreading invasive plant species by cleaning heavy equipment prior to use in the dunes and removing invasive species from the work areas prior to disturbance to avoid incorporating seeds of these species into the seed bank. Follow up surveys in disturbed areas with removal of any invasive plants found would provide for the opportunity to enhance the efficacy of this approach. We recommend that this follow up effort continue for a minimum of three years.
4. In the area where spoils will be stored temporarily, any oil, hazardous material, or other material that could negatively impact long-term dune vegetation, will be placed and used in a designated area and protective measures will be in place to ensure no material is spilled.

Reinitiation Notice

This concludes formal consultation on the All American Canal Lining Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency

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involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that 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 the listed species or critical habitat not considered in this update or the previous opinion; or (4) a new species is listed or critical habitat is designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The Service looks forward to continued cooperation with the Bureau of Reclamation on the All-American Canal lining project. Please contact Carol Roberts of my staff at (760) 431-9440 ext. 271 if you have any questions regarding this updated opinion.