



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

NOV 18 2009

In response refer to:  
2009/04097

Michael Kinsey  
Supervisory Wildlife Biologist  
Bureau of Reclamation  
South-Central California Area Office  
1243 N Street  
Fresno, California 93721-1813

Dear Mr. Kinsey:

This letter is in response to your July 21, 2009, letter initiating section 7 consultation under the Endangered Species Act (ESA) with NOAA's National Marine Fisheries Service (NMFS) as it pertains to the proposed execution of the 3<sup>rd</sup> Use Agreement (Use Agreement) for the Grasslands Bypass Project. Specifically, the Bureau of Reclamation (BOR) has determined that execution of the new Use Agreement may affect, but is not likely to adversely affect, Federally threatened Central Valley steelhead (*Oncorhynchus mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*), or any of the critical habitat designated for these listed species. In addition, BOR has determined that execution of the new Use Agreement may adversely affect the essential fish habitat (EFH) of Pacific salmon, and has requested initiation of consultation pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This letter also serves as consultation under the authority of and in accordance with the provisions of the Fish and Wildlife Coordination Act of 1934 (FWCA), as amended.

#### Description of the Action

The proposed Federal action under consideration is the continued implementation of the Grassland Bypass Project (GBP), through execution of a new Use Agreement from January 01, 2010, through December 31, 2019. The GBP has been in operation since October 1996, and has reduced the volume of agricultural drainwater discharged from the 97,400-acre Grassland Drainage Area (GDA), located north of Westlands Water District between Firebaugh and Los Banos, California, resulting in significant reductions in selenium contamination in local wetland water supply channels and the San Joaquin River.



Execution of the new Use Agreement will guide efforts to reduce the agricultural drainwater from the GDA and end contamination of Mud Slough, the water body that conveys GDA drainwater to the San Joaquin River. The new Use Agreement will include economic incentives to end discharges to Mud Slough by 2015.

The new Use Agreement would continue the following:

- The control, management, and reduction of drainwater within the GDA.
- The prohibition of discharges from the GDA into local wetland water supply channels.
- The conveyance of drainwater in Grassland Bypass Channel, a 4-mile-long earthen ditch between the GDA to the San Luis Drain.
- The conveyance of drainwater approximately 28 miles in the San Luis Drain to its northern terminus near Gustine, California.
- The discharge of drainwater from the Drain into Mud Slough for 6 miles before reaching the San Joaquin River about 3 miles upstream of its confluence with the Merced River.
- The monitoring of flow, water quality, toxicity, and biota in Mud Slough, Salt Slough, and the lower San Joaquin River.
- The review of all monitoring data by several agencies<sup>1</sup> and publication of reports.
- Continuation of the San Joaquin River Water Quality Improvement Project.

New features of the Use Agreement would include:

- An updated compliance monitoring plan, revised salt and selenium load limits, new incentive fee schedule, baseline and supplemental mitigation, and sediment management in the San Luis Drain.
- Economic incentives to reduce all discharges of selenium from the GDA to Mud Slough before the end of the new term.
- Revision of the Basin Plan for meeting selenium objectives in Mud Slough.
- New Waste Discharge Requirement from the Regional Board.
- Efforts to encourage owners of approximately 1,100 acres of farmland adjacent to the GDA that currently drain into a drain that ultimately discharges to wetland channels to join the GBP.
- Promotion of additional on-farm actions aimed at reducing drainwater production within the GDA.
- Revised web page and data management.

BOR previously consulted with NMFS on the execution of interim renewal contracts between BOR and the San Luis and Panoche Water Districts, both of which utilize the GBP to convey agricultural drainwater to the San Joaquin River. That previous consultation resulted in the issuance of a Biological and Conference Opinion (2008/04445) dated December 29, 2008, which included an analysis of potential adverse effects to listed anadromous fish species resulting from the conveyance of agricultural drainwater originating on the GDA to the San Joaquin River by

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<sup>1</sup> California Department of Fish and Game, California Regional Water Quality Control Board, San Luis & Delta-Mendota Water Authority, US Environmental Protection Agency, US Fish and Wildlife Service, US Geological Survey, Bureau of Reclamation

way of the GBP. In that Biological and Conference Opinion, NMFS determined that the level of anticipated take resulting from the execution of the interim renewal contracts with the San Luis and Panoche Water Districts was not likely to jeopardize the continued existence of listed anadromous fish species, or permanently destroy or adversely modify any of their designated or proposed critical habitat. In accordance with the analysis presented in the previous Biological and Conference Opinion, NMFS further determined that renewal of the existing Use Agreement allowing GDA drainwater to be conveyed through the GBP, which expires on December 31, 2009, was a reasonable and prudent measure necessary and appropriate to minimize the incidental take of listed fish associated with execution of the interim renewal contracts. Consistent with this finding, NMFS mandated as a non-discretionary term and condition of the incidental take statement issued in the Biological and Conference Opinion, that a new use agreement be executed authorizing continued use of the GBP for agricultural drainwater discharges from the GDA to the San Joaquin River.

#### Endangered Species Act (ESA) Section 7 Consultation

NMFS has received the information necessary to initiate consultation on Federally listed anadromous fish species and their designated critical habitat within the proposed action area. Based on our review of the material provided and the best scientific and commercial information currently available, NMFS has determined that execution of the 3<sup>rd</sup> Use Agreement for the Grasslands Bypass Project, is not likely to adversely affect Central Valley steelhead, Sacramento winter-run Chinook salmon, Central Valley spring-run Chinook salmon, or the Southern DPS of North American green sturgeon, or modify any of their respective designated critical habitat. NMFS further concludes that execution of the new Use Agreement will satisfy the terms and conditions 2a and 2b within the Biological and Conference Opinion (2008/04445) dated December 29, 2008. In addition, NMFS hereby adopts the previously issued Conference Opinion as a Biological Opinion as it relates to the critical habitat of the Southern DPS of North American green sturgeon which was designated in the final rule issued in the Federal Register on October 9, 2009 (74 FR 52300). NMFS reached this determination based on the analysis of effects considered in the preceding Biological and Conference Opinion (2008/04445) dated December 29, 2008.

#### EFH Consultation


With regards to EFH consultation, the action area has been identified as EFH for Pacific salmon in Amendment 14 of the Pacific Salmon Fishery Management Plan pursuant to the MSA. Federal action agencies are mandated by the MSA (section 305(b)(2)) to consult with NMFS on all actions that may adversely affect EFH, and NMFS must provide EFH conservation recommendations to those agencies (section 305(b)(4)(A)). Because the proposed action includes specific measures (described above) to avoid adverse affects to the habitat that supports Chinook salmon, NMFS has determined that the proposed action will not adversely affect the EFH of Chinook salmon, and additional EFH Conservation Recommendations are not being provided at this time; however, if there is substantial revision to the action, the lead Federal agency will need to re-initiate EFH consultation.

FWCA

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development (16 U.S.C. 661). The FWCA establishes a consultation requirement for Federal departments and agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage (16 U.S.C. 662(a)). Consistent with this consultation requirement, NMFS provides recommendations and comments to Federal action agencies for the purpose of conserving fish and wildlife resources. The FWCA provides the opportunity to offer recommendations for the conservation of species and habitats beyond those currently managed under the ESA and MSA. Because the proposed action is designed to avoid environmental impacts to aquatic habitat within the action area, NMFS has no additional FWCA comments to provide.

Please contact Doug Hampton at (916) 930-3610, or via email at [Douglas.Hampton@noaa.gov](mailto:Douglas.Hampton@noaa.gov), if you have any questions regarding this letter.

Sincerely,

  
for Rodney R. McInnis  
Regional Administrator

cc: Copy to File - ARN #151422SWR2001SA5967  
Bryant Chesney, Long Beach, CA  
NMFS-PRD, Long Beach, CA