

Appendix I

Public Comments Received and Responses

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Western pond turtle (*Actinemys marmorata*), hardhead (*Mylopharodon conocephalus*), tricolored blackbird (*Agelaius tricolor*), and burrowing owl (*Athene cunicularia*). The Department believes that additional review of potential effects is necessary before HMRD certifies and adopts the proposed MND.

Trustee Agency Authority: The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code).

Responsible Agency Authority: The Department also has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), the Department may need to issue an Incidental Take Permit for the Project. The Department's issuance of an Incidental Take Permit or Stream Alteration Agreement is also considered a "project" subject to CEQA (CEQA Guidelines Section 15378). The Department typically relies on the Lead Agency's CEQA compliance to make findings, pursuant to CEQA Guidelines Section 15091. CEQA grants Responsible Agencies authority to require changes in a project to lessen or avoid effects of that part of the project which the agency will be called on to approve (CEQA Guidelines §15041). In addition, a Statement of Overriding Considerations for significant State-listed species impacts will not legally support State Incidental Take Permit issuance. For the Lead Agency's CEQA document to suffice for permit issuance, it must fully describe the potential Project-related impacts to State-listed species and commit to measures to avoid, minimize, and mitigate impacts to these resources. If the CEQA document for this Project does not contain these commitments, the Department may need to act as a Lead CEQA Agency and complete a subsequent CEQA document to support permit issuance, if warranted. This could significantly delay permit issuance and, subsequently, Project implementation.

Stream Alteration Notification and Responsible Agency Authority: The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code Sections 1600 et seq. The Project description shows that the Project will involve work adjacent to the San Joaquin River, Salt Slough, Mariposa Slough, Sand Slough and other blue-lined waterways. Therefore, a Stream Alteration Agreement may be necessary. The Project proponent should submit a Stream Alteration Notification to the Department for the Project. As stated above, the Department is required to comply with CEQA in the issuance of a Stream Alteration Agreement. For additional information on notification requirements, please contact our staff in the Stream Alteration Program at (559) 243-4593.

Water Pollution: Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. Discharges from construction of the Project have the potential to pollute the San Joaquin River and the other blue-lined waterways via storm water runoff. The Regional Water Quality Control Board also has jurisdiction regarding discharge and pollution to "Waters of the State."

Direct and Indirect Impacts: The Department believes there are potential impacts to fish and wildlife that have not been evaluated. The IS/MND discloses that the transferred water was made available through conservation projects in water conveyances within the SWD/ECIC area, and that up to 6,000 afa has been prevented from being lost to infiltration and evaporation. The IS/MND does not discuss how the quantity of conserved water was calculated or even estimated, and does not disclose how much additional water will be prevented from infiltrating into the water table as a result of the proposed concrete-lined and piped conveyance system or potentially from future similar projects to conserve water (see Cumulative Impacts below). The quantity of surface water prevented from infiltrating may detrimentally affect perched water tables in the SWD/ECIC area, which may subsequently affect nearby surface water features (i.e., wetlands preserves, wildlife refuges, and the San Joaquin River), which rely on perched water for surface water to persist and to maintain riparian vegetation along blue-lined watercourses.

There are a number of protected wetlands in the Project vicinity that depend on the perched water table to support and directly interact hydrologically with surface water inundation, including the Los Banos Wildlife Area and Merced National Wildlife Refuge; and numerous private duck hunting clubs, that manage ponds and wetland habitat for waterfowl conservation. Wetlands generally perform such functions as: providing habitat for rare, threatened and endangered species and wintering and migratory waterfowl; serving as migration routes and connectors between habitats for those that require stopover points on long-distance migrations such as migratory birds, shorebirds and waterfowl; and sequestering pollutants and/or transforming nutrients thereby improving water quality. The potential direct and indirect impacts to these valuable wetlands in the Project area due to a diminishing water table need to be fully analyzed, disclosed and, mitigated.

The San Joaquin River in the vicinity of the proposed Project is a concern for the ongoing San Joaquin River Restoration Program. The United States Bureau of Reclamation is the Lead Federal Agency for the restoration, which involves restoring a run of the threatened spring-run Chinook salmon (*Oncorhynchus tshawytscha*). The section of the river near the Project area is a concern because it loses surface water flow to subterranean flow and to groundwater due to the diminishing water table. The 5,000 afa made available for transfer, which is prevented from infiltrating due to past water conservation measures, combined with the additional proposed concrete-lined and piped conveyances will prevent some quantity of water from recharging the water table, having an unknown effect on nearby wetlands and San Joaquin River flows.

It is therefore vital to determine what quantity of water has already been prevented from infiltrating into the water table, what quantity will be prevented from infiltrating due to the proposed Project, and what potential future losses may be if the practice of concrete-lining and piping surface water conveyances continues. The potential direct and indirect impacts to fish and wildlife, including their habitats; and to water flow, temperature, and quality needs to be analyzed and the level of significance determined and disclosed and, if necessary, fully mitigated.

Riparian Habitat: Riparian habitat exists adjacent to the proposed Project footprint. The Department considers projects that impact these resources as significant if they result in a net loss of acreage or habitat value. The Project map shows that the construction of irrigation water conveyance facilities, including excavation of land that is actively farmed, will run through the San Joaquin River and other blue-lined waterways. Therefore, the Department recommends that the riparian vegetation along the waterways be protected with a minimum 250-foot no-disturbance buffer delineated from the high water mark of the waterway, or from the outside edge of the riparian vegetation, whichever is greater. Depending upon what Project-related activities are proposed, larger buffers may be warranted to avoid impacts.

In addition, the Department has concerns that a lowered water table in the vicinity of valuable riparian woodlands will potentially impact the continued viability of this valuable habitat resource which supports abundant and diverse wildlife, including numerous threatened and endangered plants and animals. As has been stated previously, the CEQA document prepared for this Project should assess and fully analyze the potential impacts of this Project and the cumulative impact of the reduced seepage losses on riparian as well as adjacent wetland habitat.

Bird Protection and Nesting Birds: The Department has jurisdiction over actions which may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include Sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).

To encompass raptors and other birds, the Department considers the normal bird breeding season in the Project area to extend from February 1 through September 15. Therefore, if Project activities are to take place during the normal bird breeding season, surveys for active nests should be conducted by a qualified biologist no more than 10 days prior to the start of any vegetation removal or ground-disturbing activities. A minimum no-disturbance buffer of 250 feet should be delineated around active nests of non-listed raptors until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Swainson's Hawks: There are numerous documented Swainson's hawk breeding territories immediately adjacent to the proposed Project construction path for the planned canal, pipeline, and pumping stations. Therefore, the Department believes the proposed Project has the potential to "take" Swainson's hawk (*Buteo swainsoni*) during Project implementation via

disturbance. This State threatened species can be very sensitive to human disturbance around nests, which can lead to nest abandonment, and thus fledgling death. A minimum avoidance distance of 0.5 miles around an active nest site is sometimes necessary to avoid adult distress, but the buffer distance necessary to minimize adult distress varies significantly from site to site. The most consistent pattern of disruption which frequently leads to breeding Swainson's hawk reduction in the capacity for parental care or actual nest abandonment are new human presence disturbances or activities that suddenly increase in intensity or volume in the immediate vicinity of active nests.

In order to determine if the proposed Project will impact nesting Swainson's hawk, the Department recommends preconstruction surveys be conducted no more than 10 days prior to the start of the Project during the active nesting season (March 1 through September 1). These surveys should be conducted by a qualified biologist in accordance with the Department's *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (May 31, 2000). If an active Swainson's hawk nest is identified within the 0.5-mile radius of the planned Project, the Department should be consulted prior to initiating any ground disturbance or any other increase in human presence or activities. Although the MND for the Project discusses compensation for loss for foraging habitat through Habitat Management lands, buffer distance was not mentioned. In the absence of the Department issuing an Incidental Take Permit for this Project, the Department also recommends the use of a 0.5 -mile buffer around any active Swainson's hawk nest in order to achieve complete avoidance for this species and to ensure that "take" will not occur. This should be stated in the final CEQA document for the Project.

Burrowing Owl: Burrowing owls may occur adjacent to the Project area. If any ground-disturbing activities will occur during the burrowing owl nesting season (approximately February 1 through August 31), implementation of avoidance measures is required. The Department's Staff Report on Burrowing Owl Mitigation (CDFG 1995) recommends that impacts to occupied burrows be avoided by implementation of a no-construction buffer zone of a minimum distance of 250 feet, unless a qualified biologist approved by the Department verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. Failure to implement this buffer zone could cause adult burrowing owls to abandon the nest, cause eggs or young to be directly impacted (crushed), and/or result in reproductive failure.

San Joaquin Kit Fox: San Joaquin kit fox populations are known to fluctuate over years and absence during any one survey does not necessarily exclude the potential for kit fox to occur on a site at a future time. The Department recommends that the United States Fish and Wildlife Service's (USFWS) "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (1999) be followed prior to any ground-disturbing activities occurring within the non-irrigated agriculture portion of the Project area.

Surveys should be conducted a maximum of 30 days prior to ground-disturbing activities. In the event that this species is detected during protocol-level surveys, consultation with the Department and USFWS is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State Incidental Take Permit.

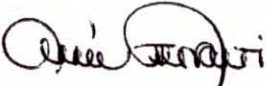
Federal Endangered Species Act (FESA): "Take" under FESA is more stringently defined than CESA; "take" under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or resting. Consultation with USFWS, in order to comply with FESA, is also advised well ahead of Project implementation.


Cumulative Impacts: CEQA requires considering cumulative impacts (CEQA Guidelines Section 15065(a)(3), Section 15130). Analysis includes considering the "incremental impacts of closely related past, present, and reasonably foreseeable probable future projects" (CEQA Guidelines Section 15355). The MND did not address what the effects may be on the water table from past water conservation measures from similar projects, which may cumulatively result in increased depletion of the water table. When a project's impact is cumulatively considerable, an Environmental Impact Report (EIR) is required unless the impact is mitigated to less than significant levels; in which case a MND may be acceptable. Therefore, an MND is not an acceptable CEQA document unless cumulative impacts are first analyzed, determined, and mitigated for.

The Department recommends HMRD provide additional information as to the potential direct, indirect, and cumulative effects to fish and wildlife resources as a result of past and future water conservation measures along with the proposed Project. Exploration of the actual quantities of water prevented from recharging the water table due to the proposed project along with past and potentially future water conservation measures in the SWD/ECIC service areas, which are similar and therefore cumulative, may warrant preparation of an EIR to fully disclose the environmental effects of the proposed project. This information is critical to accurately determine the potential environmental impacts of the proposed Project and any necessary avoidance and minimization measures.

If you have any questions regarding these comments, please contact Brian Erlandsen, Staff Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014.

Sincerely,



 Jeffrey R. Single, Ph.D.
Regional Manager

cc: See Page Seven

Chase Hurley
December 6, 2010
Page 7

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United State Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
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HENRY MILLER RECLAMATION DISTRICT #2131

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December 13, 2010

Dr. Jeffrey R. Single
Department of Fish and Game
Central Region
1234 E. Shaw Ave.
Fresno, CA 93710

JAN 9 1 2011

SUBJECT: Response to Comment Letter on the Eastside Conveyance Project, dated December 6, 2010.

Dear Dr. Single,

We have reviewed the letter from the California Department of Fish and Game (Department) dated December 6, 2010 and it is apparent that further clarification is necessary.

The proposed project is as described in your letter. The project is entirely surrounded by cultivated agricultural lands and support facilities, with a short exception where it is adjacent to the San Joaquin River.

I would like to preface the balance of the letter by stating that the primary goal of Henry Miller Reclamation District #2131 (District), in moving forward with this Project was to improve delivered water quality to customers that it serves both within San Luis Canal Company (Company) boundaries and to the State and Federal refuges that are adjacent to us upon which it has a contractual obligation. This project will deliver high quality water to the center of our District boundary which will improve the water quality to the lands within Fish and Game boundaries south of Henry Miller Avenue. It will also improve delivery flexibility to those same lands. The District, along with the Company, have historically had a good working relationship with the Department of Fish and Game that has focused on projects that can provide benefits to both parties. This Eastside Conveyance Project continues that tradition.

Source of water and groundwater impacts. Your letter notes that the Environmental Assessment/Initial Study does not describe how the conserved quantity of water was determined and does not disclose how much additional water will be prevented from infiltrating into the water table as a result of the proposed concrete lined and piped conveyance system or from future water conservation projects.

In Section 2.2, the document describes the water transfer source coming from water conservation projects already completed within Stevenson Water District and the Eastside Canal and Irrigation

Company service area. These completed water conservation projects are separate from the proposed project. These water conservation projects, including the lining/piping of the open ditches, have already undergone environmental review pursuant to CEQA. All pertinent information can be made available to the Department upon request. Thus, and to the extent that there are any impacts, those impacts would occur whether or not the proposed project is implemented. Stevinson Water District has conducted an analysis, as part of its work, indicating that more than 6,000 acre feet per year have been made available by the water conservation projects (the proposed project will transfer 5,000 acre feet per year). The purpose of this Environmental Assessment/Initial study is to analyze the impacts from the Eastside Conveyance Project alone, and the Stevinson Water District conservation projects are outside that scope.

In Section 3.2, the document indicates that there would be no impacts to groundwater from the proposed project. The proposed water transfer does not include any groundwater and will not cause an increase in groundwater pumping in Stevinson Water District. Because the proposed project includes either lined open channels or buried pipe, seepage to the perched or deep aquifers will also not occur. Since the proposed project is not replacing an existing unlined canal, this is not a change from existing conditions. There will not be a reduction of existing seepage rates, nor will there be an increase with the new facility.

The Department's letter implies that seepage from unlined irrigation channels can provide a beneficial impact to wildlife habitat and in reducing the losses from the San Joaquin River. While Henry Miller Reclamation District (District) recognizes that as a possible outcome, we must ask the Department to acknowledge that practical water conservation measures (such as lining and piping of unlined conveyance facilities) are mandated by the California Department of Water Resources, the U.S. Bureau of Reclamation, and other resource agencies. The District and its water users are obligated to use their water resources in the most efficient and practical manner, including the minimization of seepage losses. Furthermore, perched water table conditions created by an unlined facility would negatively impact adjacent agriculture.

Riparian Habitat. The Department's letter notes that riparian habitat exists adjacent to the project footprint and that the project impacts would be significant if there is a net loss of acreage or habitat value.

The San Joaquin River alignment runs parallel and 300 feet westerly of the project alignment for approximately 2,000 feet. Along this portion of the alignment an agricultural field separates the proposed canal and the San Joaquin River. The Proposed project will cross the San Joaquin River using an existing culvert and no construction will occur within the river or associated riparian habitat.

The letter also indicates that "the Department has concerns that a lowered water table in the vicinity of valuable riparian woodlands will potentially impact the continued viability of this valuable habitat resource..." As indicated above, the proposed project will not impact groundwater.

Bird Protection and Nesting Birds. The Department's letter indicates that construction activities during bird breeding season could result in a "take". Breeding season is listed as February 1 through September 15.

Due to operational requirements, construction activities are scheduled to take place between October 1 and January 31, outside of the bird breeding season. However, the District is prepared to retain a biologist to perform pre-construction surveys to identify active nests and recommend appropriate avoidance measures (including "no-disturbance buffers") should construction occur within the breeding season.

Swainson's Hawk. The Department's letter indicates that construction activities within ½ mile of active Swainson's Hawk nests during nesting season (March 1 through September 1) could result in a Swainson's Hawk "take".

The District retained HT Harvey Biological Services to perform a biological survey during breeding season along the project alignment to identify biological resources (including Swainson's Hawk nests) that could be potentially impacted by the project. HT Harvey identified two Swainson's Hawk nests within 5 miles of the project, however, neither of these were within ½ mile of the construction corridor and there were no identified nests within the portion of the San Joaquin River adjacent to the project alignment. As mentioned above, construction is scheduled to occur outside of the Swainson's Hawk nesting season and there should be no impacts. However, should construction need to continue into the Swainson's Hawk nesting season, the District is prepared to have a biologist perform a biological survey to revisit potential nesting sites consistent with Department guidelines. Any active nests will be identified and appropriate avoidance measures (including delay of construction for the affected portion) will be implemented. *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* and *California Department of Fish and Game Mitigation Guidelines for Swainson's Hawk* were included in the appendices of the Environmental Assessment/Initial Study.

Burrowing Owl. The Department's letter notes that burrowing owls may occur adjacent to the project and could be impacted during their nesting season (February 1 through August 31).

As noted above, construction activities should occur outside of the nesting season. However, the District is prepared to follow the necessary requirements for detection and avoidance, should construction occur during the burrowing owl nesting season. *Burrowing Owl Survey Protocol and Mitigation Guidelines* and *California Department of Fish and Game Staff Report on Burrowing Owl Mitigation* were included in the appendices of the Environmental Assessment/Initial Study.

San Joaquin Kit Fox. The Department's letter notes that San Joaquin Kit fox could be present during project construction and that the District should perform surveys for the Kit fox prior to construction and follow the U.S. Fish and Wildlife Service standardized recommendations.

The Environmental Assessment/Initial Study acknowledges that the San Joaquin Kit fox could be present during construction and that the recommendations contained within the *U.S. Fish and*

Wildlife Service Standardized Recommendations for Protection of the San Joaquin Kit Fox Prior to or During Ground Disturbance (included as an appendix) will be fully implemented. A survey for Kit fox will be performed prior to construction.


Cumulative Impacts. The Department's letter says that "the MND did not address what the affects may be on the water table from past water conservation measures from similar projects, which may cumulatively result in increased depletion of the water table."

As noted above, the proposed project will have no impact on the water table. "Past water conservation projects" implemented by Stevinson Water District and others may or may not have reduced seepage and impacted groundwater infiltration rates; however, the proposed project has no contribution to those impacts. The proposed project does not replace any existing channel, reduce, or increase seepage contributions to groundwater. Furthermore, these past water conservation projects are consistent with water conservation mandates from the U.S. Bureau of Reclamation, the California Department of Water Resources and other agencies. No additional analysis of this issue is necessary.

The District does not believe that the issues raised in the Department's letter invalidate the Proposed Mitigated Negative Declaration and intends to adopt it as drafted.

Please contact me or Chris Linneman at Summers Engineering (559.587.9237) if you have any questions.

Sincerely,



Chase Hurley
General Manager

Cc: State Clearinghouse
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Central Valley Region
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Fresno, CA 93706-2020

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Sacramento, CA 95825

Appendix J

U.S. Fish and Wildlife Service Concurrence Letter

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BUREAU OF RECLAMATION
SCCAO, FRESNO, CA

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:
81420-2011-I-0342

21 March 2011

EA-10-021
Memorandum

To: Chief, Resources Management Division, Bureau of Reclamation, South-Central California Area Office, Fresno, California

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

Subject: Consultation on the Eastside Conveyance Project

This memorandum transmits the U.S. Fish and Wildlife Service's (Service) concurrence with the U.S. Bureau of Reclamation's (Reclamation) November 19, 2010 determination that a proposed water transfer from the San Luis Canal Company to Panoche Water District may affect, but is not likely to adversely affect (NLAA) the federally-listed giant garter snake (*Thamnophis gigas*). The project is located in western Merced County. The proposed project includes the construction of approximately seven miles of lined canal, three pump stations, and the installation of approximately 5,000 feet of 72" diameter reinforced concrete pipe. This water conveyance facility will be used to deliver up to 5,000 acre feet per year of irrigation water transferred from Stevinson Water District and the Eastside Canal and Irrigation Company (a private mutual water company) to San Luis Canal Company, and then transfer an equivalent amount of water from San Luis Canal Company to Panoche Water District through the Central Valley Project. The water transferred from Stevinson Water District and the Eastside Canal and Irrigation Company will be developed through water conservation projects already implemented by those agencies. A joint Environmental Assessment (EA) and Initial Study (IS) was prepared by Reclamation as the lead federal agency and Henry Miller Reclamation District No. 2131 as Applicant and lead state agency¹. Under CEQA, Stevinson Water District, Panoche Water District, and the California State Water Resources Control Board are the responsible agencies.

This response is provided pursuant to section 7(a) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*), and in accordance with the regulations governing interagency consultations (50 CFR §402). We received your November 19, 2010 request for concurrence memo on December 03, 2010. We requested additional information from Reclamation regarding

¹ Henry Miller Reclamation District owns or has easements on all conveyance and drainage facilities that were once owned by the San Luis Canal Company. The District is the public entity that provides all operations and maintenance services on its canal and drain facilities, while the San Luis Canal Company maintains water rights. The San Luis Canal Company is a private mutual water company that holds the historic water rights off of the San Joaquin River system and hold Exchange Contracts for that water with Reclamation.

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this project via e-mail on December 16, 2010 and February 1, 2011. Reclamation provided additional information via e-mail on January 20, 2011 and February 14, 2011, respectively. Our concurrence is based on the information you provided in the aforementioned e-mails, as well as in the documents provided including DEA/IS (EA-10-21) dated September 2010, the Biological Technical Report dated November 12, 2010, a memo from Eric C. Hansen (giant garter snake biologist) to Chase Hurley (San Luis Canal Company) regarding considerations for giant garter snake compliance pursuant to the proposed East Side Conveyance Project, Merced County, California, a comment letter dated December 13, 2010 from Henry Miller Reclamation District #2131 to the California Department of Fish and Game responding to a comment letter on the Eastside Conveyance Project, and materials provided by H.T. Harvey and Associates on behalf of the San Luis Canal Company dated February 24, 2011.

The Eastside Conveyance Project could have several components of effects on listed species (e.g., effects from the water transfer from the originating districts and in the receiving districts; and construction of the conveyance and pumping structures, etc.). Related projects that the Service has already provided ESA review on include a water conservation project funded by Reclamation 2025 Challenge Grant for the Stevenson and Merquin Water Districts' pipe installation project, one of the originating districts for this water transfer (Service File No. 06-I-0695); and effects of CVP water deliveries to Panoche Water District (the recipient district of this water transfer) as part of CVP Interim Renewal Contracts (Service File No. 2008-I-0538-4). The effects considered in this NLAA concurrence memo are related solely with the construction of conveyance and pumping facilities for the Eastside Conveyance Project.

Reclamation has determined that the proposed action will have no effect on the federally-listed species or critical habitats identified in Table 1 below and is not requesting concurrence with those determinations. Reclamation did not request Service concurrence with this determination, and as a result, these species are not considered as part of this consultation. However, in the spirit of interagency cooperation, the Service would like to take this opportunity to discuss in more depth one of the species, the San Joaquin kit fox (*Vulpes macrotis mutica*), included in Reclamation's 'no effect' determination. The DEA for this project noted that there are several California Natural Diversity Database recorded occurrences within a 10-mile radius of the action area, that the area could be used as foraging habitat for kit fox, that kit fox are highly mobile and could traverse the area for foraging purposes, and the DEA concluded, there is the potential for harm to kit foxes. Therefore, the Service believes that this species would more appropriately fall under the 'may affect' category, with the subsequent required analysis of whether or not the project is likely to adversely affect the species. As explained in the Service's 1998 Consultation Handbook on conducting section 7 consultations, an action agency's determination of 'no effect' is within its purview and discretion, and no further action or response is required from the agency or the Service regarding the Act. Therefore, the Service is only providing this response to offer our perspective on this aspect of consultation for the proposed project.

Reclamation noted in an e-mail to the Service dated February 14, 2011 that additional language would be added into the Environmental Protective Measures (Section 2.2.1) of the Final EA for this project, clarifying that the "no effect" determination is only justified if no evidence is found to support presence of kit fox in the Action Area. The Final EA will be amended to include the following Actions for kit fox:

“A qualified biologist will conduct pre-construction protocol level surveys for the San Joaquin kit fox no fewer than 14 days and no more than 30 days prior to the onset of any ground disturbing activity (USFWS 2011). San Luis Canal Company will implement *U.S. Fish And Wildlife Service Standardized Recommendations For Protection Of The Endangered San Joaquin Kit Fox Prior To Or During Ground Disturbance* (USFWS 2011). If kit foxes or their dens are detected at any time, all construction activities associated with the project will be halted immediately and Reclamation staff notified within two working days. The project will be placed on hold until further analysis with Reclamation staff, and if necessary consultation with the USFWS, is complete.”

Table 1. Threatened and endangered species and/or critical habitat potentially within the Action Area that Reclamation determined would not be affected by the proposed action.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status²</u>
Colusa grass	<i>Neostapfia colusana</i>	T, H
Hoover's spurge	<i>Chamaesyce hooveri</i>	T, H
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>	T
Conservancy fairy shrimp	<i>Branchinecta conservatio</i>	E, H
Longhorn fairy shrimp	<i>Branchinecta longiantenna</i>	E, H
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	T, H
Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	E, H
Delta smelt	<i>Hypomesus transpacificus</i>	T, H
Blunt-nosed leopard lizard	<i>Gambelia (=Crotaphytus) sila</i>	E
California red-legged frog	<i>Rana aurora draytonii</i>	T, H
California tiger salamander	<i>Ambystoma californiense</i>	T, H
Fresno kangaroo rat	<i>Dipodomys nitratooides exilis</i>	E, H
Giant kangaroo rat	<i>Dipodomys ingens</i>	E
San Joaquin kit fox	<i>Vulpes macrotis mutica</i>	E

The Service's concurrence with a NLAA determination for giant garter snake for this Project is based in part on an Applicant commitment transmitted by Brian Boroski of HT Harvey and Associates (on behalf of Henry Miller Reclamation District #2131/San Luis Canal Company) (Attachment A) to implement revised Avoidance and Minimization Measures (Revised AMMs). The Service's *Standard Avoidance and Minimization Measures During Construction in Giant Garter Snake Habitat* were revised for this Project based on recommendations made by

² Status: (E) Endangered; (T) Threatened; (H) Designated Critical Habitat

consulting biologist Eric C. Hansen (in his November 2010 letter to San Luis Canal Company), who has toured and surveyed much of the Project Area. The Revised AMMs deviate from the Standard AMMs in 2 ways: 1) some construction would be allowed outside the active period of giant garter snakes, and 2) some construction would occur within 200 feet of giant garter snake habitat. Work proposed for the winter of 2010-2011 will take place mostly within actively cultivated agricultural fields (that are not in rice production) where giant garter snakes are not expected to occur, and will generally not fall within 200 feet of marginal or suitable aquatic habitat features.

Our concurrence with your NLAA determination for giant garter snakes concludes this consultation for this action. Therefore, unless new information reveals effects of the proposed action that may affect listed species in a manner or to an extent not considered, or a new species or critical habitat is designated that may be affected by the proposed action, no further action pursuant to the ESA is necessary. If you have questions regarding this action, please contact Joy Winckel or Daniel Russell at (916) 414-6600.

Attachments

cc:

USBR, Sacramento, CA (Attn: Mike Chotkowski)

USBR, Fresno, CA (Attn: David Hyatt)

HT Harvey and Associates, Fresno, CA (Attn: Brian Boroski)

Attachment A. Revised Avoidance and Minimization Measures for the Giant Garter Snake, Eastside Conveyance Project.



H. T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

AVOIDANCE AND MINIMIZATION MEASURES

- Among the sites possessing marginal or suitable aquatic habitat within 200 feet of proposed ground disturbing activities, four are of interest during the winter (inactive season) of 2011. The first of these sites is located at the head of the Mariposa Bypass at the northern end of the Project. While the Project itself is sited within cultivated fields, excavation would occur within 200 feet of suitable aquatic habitat and undisturbed upland (Appendix A, Photo 1). While it is unlikely that giant garter snakes would move to the disturbed project area during the inactive season, movement onto the project site will be prevented by installing exclusion (36-inch permeable silt) fencing between the project site and potential habitats. Though fencing would include trenching, take of giant garter snakes present below ground will be avoided by placing the fence either along the existing earthen roadway or within the disturbed agricultural field where no burrows are present. Once installed, the fencing will be monitored regularly to ensure its integrity as a barrier. Repairs will be made immediately if the integrity of the barrier is compromised.
- The remaining sites include 1) the agricultural drain north of the airstrip, 2) Salt Slough at T1 Road, and 3) the agricultural drain north of Palazzo Road (Appendix A, Photos 3-4, respectively). Because each of these locations possess at least minimal suitability for giant garter snakes, work within channels or terrestrial habitat that is not currently cultivated will be avoided during the inactive season. However, for any work conducted in cultivated uplands within 200 feet of these features, risks of take will be reduced or eliminated by installing exclusion fencing as described above.
- For inactive season work proposed for 2012, the potential for take will be minimized in features like the agricultural drain north of the airstrip by dewatering the feature by September 15, forcing giant garter snakes, should they occur, to move elsewhere in search of aquatic prey. Once features have been dewatered for 15 days, exclusion fencing will be installed to prevent snakes from moving back to the site during the winter when work is proposed. This option is not available for 2011, however, because the majority of snakes are expected to have already gone to ground.
- Confine clearing to the minimal area necessary to facilitate construction activities. Flag and designate avoided giant garter snake habitat within or adjacent to the project area as Environmentally Sensitive Areas. This area will be avoided by all construction personnel.
- Construction personnel will receive Service-approved worker environmental awareness training. This training instructs workers to recognize giant garter snakes and their habitat(s).
- 24-hours prior to construction activities, the project area will be surveyed for giant garter snakes. Survey of the project area will be repeated if a lapse in construction activity of two weeks or greater has occurred. If a snake is encountered during construction, activities shall cease until appropriate corrective measures have been completed or it has been determined that the snake will not be harmed. Report any sightings and any incidental take to the Service immediately by telephone at (916) 414-6600.



H. T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

- Any dewatered habitat will remain dry for at least 15 consecutive days after April 15 and prior to excavating or filling of the dewatered habitat.
- After completion of construction activities, remove any temporary fill and construction debris and, wherever feasible, restore disturbed areas to pre-project conditions. Restoration work may include such activities as replanting species removed from banks or replanting emergent vegetation in the active channel.
- Follow the conservation measures in Table 1 to minimize the effects of loss and disturbance of habitat on giant garter snakes. Replacement ratios are based on the acreage and on the duration of disturbance.

Table 1. Summary of Giant Garter Snake Conservation Measures

	IMPACTS: DURATION	IMPACTS: ACRES	CONSERVATION MEASURE: COMPENSATION
LEVEL 1	1 season	Less than 20 and temporary	Restoration
LEVEL 2	2 seasons	Less than 20 and temporary	Restoration plus 1:1 replacement
LEVEL 3	More than 2 seasons and temporary	Less than 20 and temporary	3:1 Replacement (or restoration plus 2:1 replacement)
	Permanent loss	Less than 3 acres total giant garter snake habitat AND Less than 1 acre aquatic habitat; OR Less than 218 linear feet bank habitat	3:1 Replacement

- Giant garter snake habitat includes 2.0 acres of surrounding upland habitat for every 1.0 acre of aquatic habitat. The 2.0 acres of upland habitat also may be defined as 218 linear feet of bankside habitat which incorporates adjacent uplands to a width of 200 feet from the edge of each bank. Each acre of created aquatic habitat should be supported by two acres of surrounding upland habitat. Compensation may include creating upland refuges and hibernacula for the giant garter snake that are above the 100-year flood plain.
- A season is defined as the calendar year period between May 1 and October 1, the active period for giant garter snake when mortality is less likely to occur.



Appendix K

CEQA Notice of Determination to Adopt Mitigated Negative Declaration

HENRY MILLER RECLAMATION DISTRICT #2131

11704 W. Henry Miller Avenue • Dos Palos, California 93620

Dates Posted

From:

To:

Merced County Clerk

2011 JAN -5 AM 10:07

KAREN ADAMS
MERCED COUNTY CLERK
BY
DEPUTY

December 23, 2010

Merced County Clerk
2222 M Street
Merced, CA 95340

SUBJECT: Eastside Conveyance Project Initial Mitigated Negative Declaration and Notice of Determination.

Enclosed is an original and a copy of the above subject Notice of Determination and Mitigated Negative Declaration and a stamped, self-addressed envelope. Please file the original and stamp the copy as "received" and return it to Henry Miller Reclamation District.

If you have any questions, please call me.

Very truly yours,



Chase Hurley
General Manager

Enclosure

NOTICE OF DETERMINATION

Dates Posted
From: 1-6-11
To: 2-5-11
Merced County Clerk

TO: X OFFICE OF PLANNING AND RESEARCH
1400 Tenth Street
Sacramento, CA 95814

FROM: HENRY MILLER RECLAMATION DISTRICT
NO. 2131
11704 W. Henry Miller Avenue
Dos Palos, CA 93620

X County Clerk
County of Merced

2011 JAN -5 AM 10:08
KAREN HARRIS
MERCE COUNTY CLERK
BY: [Signature]
Sentry

SUBJECT: FILING NOTICE OF DETERMINATION (Section 21108 or 21152 of Public Resources Code)

Project Title: EASTSIDE CONVEYANCE PROJECT

State Clearinghouse No.: 2010111033

Contact Person: Chase Hurley (209)826-5112

Project Location (include county): The project is located in western Merced County along Turner Island Road approximately between Henry Miller Avenue and the Eastside Bypass.

Name and Description of Project: The proposed project involves the construction of approximately seven miles of lined canal, three pump stations, and the installation of approximately 5,000 feet of 72" diameter reinforced concrete pipe. This water conveyance facility will be used to deliver up to 5,000 acre feet per year of irrigation water transferred from Stevinson Water District and the Eastside Canal and Irrigation Company (a private mutual water company) to San Luis Canal Company, and then transfer an equivalent amount of water from San Luis Canal Company to Panoche Water District through the Central Valley Project. The water transferred from Stevinson Water District and the Eastside Canal and Irrigation Company will be developed through water conservation projects already implemented by those agencies.

The Board of Directors of the Henry Miller Reclamation District No. 2131, on Dec 23, 2010, has approved the above described project and has taken the following action:

1. Determined that the project will x will not have a significant effect on the environment.
2. An EIR has been prepared pursuant to the provisions of the California Environmental Quality Act and was certified and findings were made pursuant to Section 38N of the District CEQA Guidelines.
X A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Mitigated Negative Declaration is attached.
3. A Statement of Overriding Consideration was X was not adopted for this project.
4. Mitigation measures X were were not adopted to reduce the impacts of the approved project as follows:
5. Findings were X were not made pursuant to the provisions of CEQA.

MITIGATED NEGATIVE DECLARATION

Pursuant to Section 21000 et. Seq. of the Public Resources Code, State of California, a Mitigated Negative Declaration is adopted for the following project.

1. **Project Title:** Eastside Conveyance Project

2. **Location and Description:**

The proposed project involves the construction of approximately seven miles of lined canal, three pump stations, and the installation of approximately 5,000 feet of 72" diameter reinforced concrete pipe. This water conveyance facility will be used to deliver up to 5,000 acre feet per year of irrigation water transferred from Stevinson Water District and the Eastside Canal and Irrigation Company (a private mutual water company) to San Luis Canal Company, and then transfer an equivalent amount of water from San Luis Canal Company to Panoche Water District through the Central Valley Project. The water transferred from Stevinson Water District and the Eastside Canal and Irrigation Company will be developed through water conservation projects already implemented by those agencies.

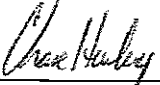
3. **Project Sponsor:**

Henry Miller Reclamation District No. 2131
11704 W. Henry Miller Ave.
Dos Palos, CA 93620

4. **Finding:**

Based on the attached Initial Study and consideration of comments received, it is the finding of the Board of Directors of Henry Miller Reclamation District No. 2131 that:

- (X) The proposed project, with the implemented mitigation activities, COULD NOT have a significant effect on the environment and this MITIGATED NEGATIVE DECLARATION is prepared. This finding is based on the independent judgment of the Board of Directors.


Chase Hurley, General Manager
Henry Miller Reclamation District No. 2131

Date: 12.23.10