



United States Department of the Interior



NATIONAL PARK SERVICE
Interior Regions 8, 9, 10, and 12
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IN REPLY REFER TO:
I.A.2 (PW-NR)

July 20th, 2021

James J. Handura
Colonel, U.S. Army
33rd Commander and District Engineer
Sacramento District, U.S. Army Corps of Engineers
1325 J Street, Sacramento, CA 95814
James.J.Handura@usace.army.mil

SUBJECT: American River Common Features Project, Consistency Determination under Section 7, National Wild and Scenic Rivers Act

Dear Colonel Handura:

This letter is in response to your request of June 22, 2021 and updated July 19, 2021 (American River Common Features Project - 2016 Wild and Scenic Rivers Programmatic Consistency Analysis), for determination that the American River Common Features Project (ARCF) on the Lower American River (LAR) in Sacramento County is consistent with the National Wild and Scenic Rivers Act (WSRA). The purpose of this proposed project is to reduce the overall flood risk within the larger ARCF study area, including the LAR. An unacceptably high risk of flooding from levee failure threatens the public safety of approximately 530,000 people as well as property and critical infrastructures throughout the study area. The Proposed Action is needed to reduce the risks of levee failure associated with erosion during particularly high flow events. Specific sites have been identified as being located along a portions of the LAR where the levees are relatively close to the river channel, and during high flows this constrained reach is subjected to extremely high velocities that significantly increase the risk of erosion leading to levee failure. Although the overall ARCF project on the LAR extends up to 11 miles from Business I-80 to Arden Pond, this determination applies solely to the United States Army Corps of Engineers' (USACE) Contracts 1 and 2. In terms of specific repair sites, this includes Sites 2-1, 2-2, and 2-3. These projects were addressed in the 2016 Environmental Impact Statement/Environmental Impact Report (EIS/EIR) with subsequent Supplemental Environmental Assessment (EA) specific to Contracts 1 and a Supplemental EIS for Contract 2. Contracts 3 and 4 and plans for specific mitigation sites will have to be assessed in the future as more highly developed designs are completed and these projects approach implementation

INTERIOR REGION 8 • LOWER COLORADO BASIN*
INTERIOR REGION 9 • COLUMBIA—PACIFIC NORTHWEST*
INTERIOR REGION 10 • CALIFORNIA—GREAT BASIN
INTERIOR REGION 12 • PACIFIC ISLANDS

AMERICAN SAMOA, ARIZONA*, CALIFORNIA, GUAM, HAWAII, IDAHO, MONTANA*,
NEVADA, NORTHERN MARIANA ISLANDS, OREGON, WASHINGTON

*PARTIAL

In reviewing this project, we have reviewed and considered the following:

- Endangered Species Act Section 7(a)(2) Biological Opinion, Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the American River Watershed Common Features General Reevaluation Report Reinitiation 2020, May 12, 2021
- American River Watershed Common Features, American River Contract 1, Section 7 Wild and Scenic Rivers Analysis, February 2020
- American River Watershed Common Features 2016 Project—Section 7 Wild and Scenic River Programmatic Consistency Analysis, last updated July 2021
- Initial Study/Mitigated Negative Declaration, Outline Maintenance of Stream Channels and Drainage Facilities, 2014
- Endangered Species Act Section 7(a)(2) Biological Opinion (BO), and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response, for the American River Common Features General Reevaluation Report (ARCF GRR), National Marine Fishery Services (NMFS), September 2015
- American River Watershed Common Features, Water Resources Development Act of 2016, American River Contract 1, Supplemental EA/Supplemental EIR, June 2020
- American River Watershed Common Features, Water Resources Development Act of 2016, American River Contract 2, Supplemental EIS/EIR, June 2021
- Biological Assessment, American River Watershed Common Features, March 2020
- American River Watershed Common Features General Reevaluation Report Final Environmental Impact Statement Environmental Impact Report December 2015, Revised May 2016
- Request to Reinitiate the Endangered Species Act Section 7(a)(2) BO, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response, for the ARCF GRR, Sacramento County, California.
- Letter from Mark Ziminske, Chief, Environmental Resources Branch to Maria Rae, NMFS, April 13, 2020
- Formal Consultation on the American River Common Features Project, Sacramento County, California, USFWS and NMFS Biological Opinions, September 11, 2015
- Draft American River Watershed Common Features 2016 Project – American River Contract 1, Section 7 Wild and Scenic River Analysis Prepared for U.S. Army Corps of Engineers, Sacramento District, May 2020
- Attachment 4 to the Lower American River Subreach 2: Summary of Bank Protection Conceptual Design Process Lower American River Subreach 2 Draft Final Resource Assessment, November 2018
- Sacramento County American River Parkway Plan, 2008
- Biological Assessment Information Supporting the Reinitiation of Consultation on the American River Common Features WRDA 2016 Project, July 2020
- Letter from Sacramento County Regional Parks dated July 17, 2020. Comments on the Draft Supplemental EA/EIR for American River Watershed Common Features, Water Development Act of 2016. American River Contract 1

- Letter from Sacramento County Regional Parks Department dated July 14, 2021, Comments on the Draft Supplemental EIS/EIR for American River Watershed Common Features, Water Development Act of 2016. American River Contract 2.
- American River Parkway Natural Resources Management Plan, Draft, March 2021, Sacramento County Regional Parks
- USACE American Rivers Common Features Wild and Scenic Rivers Programmatic Consistency Analysis June 2021, Updated July 2021
- American River Watershed Common Features 2016 Project—Section 7 Wild and Scenic River Programmatic Consistency Analysis, USACE, April 2021
- American River Parkway Natural Resources Management Plan, Draft, March 2021, Sacramento County Regional Parks

The LAR is a component of the National Wild and Scenic Rivers (WSR) System. The National Park Service (NPS) is the federal river administering agency for the Lower American WSR with responsibility for making Section 7 determinations. Section 7 of the WSRA prohibits federal agencies from “assist[ing] by loan grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established.¹” The Interagency WSR Coordinating Council defines a water resource project as “Construction of developments [including emergency repairs] that would affect the free-flowing characteristics of a Wild and Scenic River ...²” Projects that do not meet the criteria for Section 7 may be subject to review under the protection and non-degradation clause in Section 10(a) the WSRA.

We have reviewed the subject projects under Section 7 of the WSRA. The NPS considers the location of the project and the potential for direct and adverse effects on free-flow, water quality, and the outstandingly remarkable values (ORV) in determining whether or not a project warrants a WSRA Section 7 Determination. According to various biological assessments and the 2021 NMFS BO, the subject project involves activity within the ordinary high-water mark and has the potential to directly and adversely impact free-flow, water quality, and the anadromous fish ORV (specifically Central Valley Spring-run Chinook Salmon, Central Valley Winter-run Chinook Salmon, and Central Valley Steelhead). It also has the potential of indirect, short-term, and unavoidable adverse impacts due to construction activities which have the potential to directly and adversely impact the Recreation ORV. It is therefore subject to a WSRA Section 7 Determination.

The Supplemental EA/EIR for Contract 1 and Supplemental EIS/EIR for Contract 2 both contain a table which summarizes the results of the resource effects analysis of the Proposed Action on the environment. The tables provide a description of resource baselines and effects and significance conclusions before and after implementation of mitigation, and mitigation measures. The documents show the following, relative to WSRA river values:

¹ Section 7 of the Wild and Scenic Rivers Act

² Interagency Wild and Scenic River Council Flowchart October 2017, <https://www.rivers.gov/documents/section7/section-7-flowchart.pdf>

- Water Quality – Significant impact prior to mitigating measures; Mitigation Measure SRA-1: Implement Measures to Avoid, Minimize, and Compensate for Effects on Shaded Riverine Aquatic Habitat and application of Best Management Practices (BMPs) brings the level of impact to Less Than Significant.
- Fishery ORV – Table ES-1 also addresses “Special Species” which includes the 3 listed anadromous fish species. Generally, the impact of the project is found to have a Significant impact but are determined to be Less Than Significant after the application of mitigating measures.
- Recreation ORV – Significant impact from Temporary and Short-term Changes in Recreational Opportunities during Project Construction Activities. Even with the Implementation of the 2016 EIS/EIR Mitigation Measure REC-1 (Avoid and Minimize Effects on Recreational Use), the level of impact remains Significant, but Unavoidable.

On May 12, 2021, the NMFS issued its Endangered Species Act Section 7(a)(2) Biological Opinion, Magnuson-Stevens Fishery Conservation and Management Act (MSA) Essential Fish Habitat Response for the ARCF GRR Reinitiation, 2020. This is a programmatic document with “The Action” covering the Project descriptions and 2015/16 ARCF EIS/EIR, subsequent supplementals, and biological assessments noted potential indirect, short-term, and unavoidable adverse impacts due to construction activities which have the potential to affect to several species of Pacific Coast Salmon, and Central Valley Steelhead. These adverse impacts include hazardous materials, increased turbidity, and physical disturbance. These documents also identify potential temporary adverse impacts relative to “Impacts on Population Survival and Potential for Recovery”.

We utilized the most recent NMFS BO to inform our determination. In its BO, the NMFS concluded that “the analyzed project is not likely to jeopardize the continued existence of the federally listed as endangered, Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) evolutionarily significant unit (ESU), the threatened Central Valley spring-run Chinook salmon ESU (*O. tshawytscha*), the threatened southern distinct population segment (DPS) of the North American green sturgeon (*Acipenser medirostris*), and the threatened California Central Valley steelhead (*O. mykiss*) DPS, and is not likely to destroy or adversely modify their designated critical habitats. NMFS has included an incidental take statement with reasonable and prudent measures and nondiscretionary terms and conditions that are necessary and appropriate to avoid, minimize, or monitor incidental take of listed species associated with the project.”(page 101) The BOs letter of transmittal also conveys NMFS's review of potential effects of the ARCF GRR on essential fish habitat (EFH) for Pacific Coast salmon, designated under the MSA. This review was pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation. The analysis concludes that the project is not likely to destroy or adversely modify their designated critical habitats. The EFH consultation concludes with numerous conservation recommendations.

The NMFS BO begins with a Table which illustrates “Affected Species and NMFS’ Determinations”. Four ESA-Listed Species are examined: Central Valley spring-run Chinook Salmon ESU; California Central Valley steelhead DPS; Sacramento River winter-run Chinook

salmon ESU (*O. tshawytscha*), and Southern DPS of North American green sturgeon. Note: According to NMFS staff (telecom with Allison Lane, May 26, 2021), they included Southern DPS of North American green sturgeon, a species which is present in the Sacramento River, but not observed in the LAR. However, their designated critical habitat does extend a few miles up into the American River. For this reason, their critical habitat was extended to the LAR. Fall and late Fall run Chinook (an unlisted ESA species) is considered protected by the MSA. Although the original WSR Eligibility Study and EIS/EIR (1981) included Fall- run Chinook, Green Sturgeon, and American Shad among the species that constitute the Fishery ORVs, these species were not addressed in the NMFS BO, except to examine the Essential Fish Habitat for Green Sturgeon under MSA standards.

For all ESA listed species, NMFS found that the ARCF project was “Likely to Adversely Affect Species, but the Action Unlikely to Jeopardize the Species”. It further found that the “Action is Likely to Adversely Affect Critical Habitat, but Action is Unlikely to Destroy or Adversely Modify Critical Habitat”. NMFS concluded that the LAR has a Fishery Management Plan that identifies EFH in the Project Area relative to Pacific Coast Salmon; that the “Action Does Action Have an Adverse Effect on EFH; and EFH Conservation Recommendations are provided”.

Section 2.9.3, Reasonable and Prudent Measures of the BO, identifies “Reasonable and prudent measures” that are nondiscretionary measures that are necessary or appropriate to minimize the impact of the amount or extent of incidental take.

Section 2.9.4. Terms and Conditions contains the terms and conditions that also are non-discretionary, and the Corps or any applicant must comply with them in order to implement the RPMs. In Section 2.10. Conservation Recommendations, Section 7(a)(1) of the ESA directs Federal agencies to use their authorities to further the purposes of the ESA by carrying out conservation programs for the benefit of the threatened and endangered species. Specifically, conservation recommendations are suggestions regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat.

As a condition of a finding that our determination that the project is consistent with the WSRA, NPS adopts all of the Reasonable and Prudent Measures, Terms of Conditions, and Conservation Recommendations pertaining to the American River contained in the NMFS BO. Relevant mitigation measures listed in the ARCF EIS/EIR December 2015, Revised May 2016 and Supplemental Environmental documents for Contracts 1 and 2 are likewise adopted.

In addition to the planting benches, NMFS identified off-site restoration and mitigation sites in the Sacramento River and mitigation banks. For the WSRA analysis all affects need to be avoided or reduced through protection, restoration, and enhancement of river values on the Lower American River. Therefore, in addition to the conditions outlined in the NMFS BO, as provided in USACE’s American Rivers Common Features Project Wild and Scenic Rivers Programmatic Consistency Analysis (USACE July 2021), a condition of this assessment is to restore an additional 28 acres of riparian and woodland vegetation habitat and 23 acres of aquatic shaded riverine habitat along the lower American River consistent with the Sacramento County Regional Parks Natural Resources Plan of the American River Parkway.

Also, the NPS includes a condition to create a plan for long-term maintenance of the planting benches and provisions to address restoration of the site when the launchable rock is launched.

We also examined potential impacts to the Recreational ORV, which are primarily centered around disruption of recreation activities within the American River Parkway. Sacramento County Regional Parks have identified a number of concerns with temporary detours and relocations of the Jedediah Smith Trail system, temporary closures of established river access points within the Parkway during construction and a general concern about the elimination of mature vegetation along the Parkway and river access sites.

In 2008, the County of Sacramento finalized the American River Parkway Plan to provide a guide to land use decisions affecting the Parkway and specifically addressing the Parkway's preservation, use, development, and administration. The Parkway Plan acts as the management plan for the Federal and State Wild and Scenic Rivers Acts.³ According to the Parkway Plan, permitted recreational activities in the Parkway are divided into five categories: nature appreciation, recreation enjoyment, trails recreation, recreational participation in group sports and athletics, and aquatic recreation. The bicycle trail Jedediah Smith Memorial Trail is a corridor for Parkway and non-Parkway destinations, providing access for bicyclists between downtown Sacramento and points to the east. The trail has become a well-established commuter route and vital recreational asset. Recreational boating is one of the primary uses of the American River. Boat access is located at Discovery Park on both the Sacramento and American River side of the park. Boat launches within the Parkway are located at Howe Avenue, Watt Avenue, and Gristmill Park. Rafting on this stretch of the river is very common during summer months with the highest use on the weekends and holidays.

According to the 2016 Final EIS/EIR and subsequent assessments, construction on the Lower American River would result in increased traffic in the Parkway, temporary trail detours, and permanent re-route of the trail. This would result in impacts to recreational users, bicycle commuters, and residents adjacent to the levee structure. Outside of the Parkway, hauling on residential roads to access the Parkway would result in significant impacts to residents along the selected routes.

According to the 2016 Final EIS/EIR, Section 3.10.6, Mitigation Measures, USACE and the CVFPB would implement measures to reduce temporary, short-term construction effects on recreational facilities in the Project Area. These mitigation measures are included in Attachment 2 (Conditions) of the Assessment document. The Supplemental Environmental Documents, June 2020 and 2021 that apply to Contract 1 and Contract 2, also identify specific mitigation measures. These mitigation measures are also included in Attachment 2 (Conditions) of the Assessment document.

Additionally, the Sacramento County Regional Parks Department (SCRPD) has indicated a number of potential impact concerns in their ARCF Project Recreational Facility Closures and

³ Land Use Section 3.3 of the [American River Parkway Plan](#)

Detours 2022-2024, version 1/21/21 map. These include levee top detours; closed multi-use trail; areas controlled by flaggers; “out and back” trail use only; open multi-use trails.

Impacts at the following Contract 1 and 2 repair sites within the American River Parkway have been identified on the map:

- Golf course and bike trail closure on river-right. Projected 2022-2025.
- Levee road closure related to repair site 2-1 from Glen Hall Park to CSU, Sacramento on river-left. Projected 2022-2023.
- Bike trail relocation at H St. Bridge, river-right. Projected 2024.
- Bike trail detour from current trail to the levee from H St. Bridge to Howe Ave, river-right. Projected 2022-2023.
- Levee top closure above Howe Ave., river-right. Projected 2022-2023.

To address these recreation effects, the NPS in consultation with SCRCP, provide the following conditions:

- Minimize paved trail closures through the use of flaggers. Paved trails, the equestrian trail, trail levee crown, and/or maintenance roads should be made available to the public during times when it is safe and feasible to do so. Reduce the time for trail closures by shortening the time to only include times when active construction is occurring at that location. Open the trail in between construction stages as feasible. Open the levee top to recreation use after major construction is completed and the site is being planted. Construction traffic should use maintenance roads as feasible.
- Long-Term Maintenance of Bank Protection Site. The Operations and Maintenance Manual (O&M Manual) for this project should include a long-term plan for maintenance of the planting benches and restoration sites throughout the life of the project. The plan shall also require that the Site 2-1 and 2-2 planting benches be repaired and/or rebuilt, as needed to benefit fish and wildlife habitat, especially if the rock trench launches during a flood event. Site 2-3 is expected to erode through natural processes and the planting benches should be managed with that goal in mind.
- Temporary bike detour routes should be paved. Temporary pavers are not usable by road bikers. We recommend providing a similar experience on the detour as recreationists experience on the existing trail given the length and duration of the detour.
- For permanent re-routes of the trails, replace the equestrian/hiking trail and the bike path in-kind with a similar experience as currently provided. The bike path should be paved, and a similar level of riparian vegetation should be provided along both trails. Re-plant any lost riparian vegetation.
- In addition to the proposed signage for closures and detours, SCRCP requests that each project area should provide signage with a project description to communicate what is happening in the area to Parkway users.
- SCRCP requests that trail detours, *including detour trail surface treatments*, be developed in consultation with Sacramento County Regional Park staff (in addition to the City of Sacramento Bicycle and Pedestrian Coordinator.)
- SCRCP also requests 14-day notice prior to initiation of construction within the Parkway.

As a condition of a finding that the project is consistent with the WSRA, NPS adopts all of the conditions contained in Attachment 2 of the Assessment document relative to the Recreation ORV.

If the project scope, effects, and/or restoration plans change, please re-initiate consultation.

If you have any questions, please contact Susan Rosebrough at 206-220-4121 or Barbara Rice at 415-623-2320.

Sincerely,

Cindy Orlando
Acting Regional Director
National Park Service, Interior Regions 8, 9, 10 & 12

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