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FISH AND WILDLIFE SERVICE
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In Reply Refer to:
2024-0085380-S7-001

May 10, 2024
Sent-Electronically

Leah Fisher
Regional Permit Specialist
Regulatory Division
U.S. Army Corps of Engineers
1325 J Street
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Subject: Reinitiation of Programmatic Informal Consultation on the Proposed Fisheries Restoration Grant Program Project, which includes portions of Shasta, Tehama, Glenn, Butte, Colusa, Yuba, Sutter, Nevada, Placer, Yolo, El Dorado, Sacramento, Amador, Calaveras, San Joaquin, Tuolumne, Stanislaus, Mariposa, Merced, Madera, Fresno, Tulare, and Kings Counties, California (Corps File Number SPK-2014-00534)

Dear Leah Fisher:

This letter is in response to the U.S. Army Corps of Engineers' (Corps) March 14, 2024, email requesting reinitiation of programmatic informal consultation with the U.S. Fish and Wildlife Service (Service) for the proposed Fisheries Restoration Grant Program Project (Grant Program) (proposed project), in portions of Shasta, Tehama, Glenn, Butte, Colusa, Yuba, Sutter, Nevada, Placer, Yolo, El Dorado, Sacramento, Amador, Calaveras, San Joaquin, Tuolumne, Stanislaus, Mariposa, Merced, Madera, Fresno, Tulare, and Kings Counties, California. The Service issued a concurrence letter (Service File Number 08ESMF00-2017-I-0291-1; original concurrence letter) on November 13, 2018. The Service received your email requesting reinitiation on March 14, 2024. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The federal action on which we are consulting is the issuance of a Clean Water Act Section 404 Regional General Permit by the Corps to the California Department of Fish and Wildlife (Department) for the Central Valley Grant Program. Our primary concern and mandate is the protection of federally listed species pursuant to the Act.

Pursuant to 50 CFR §402.120), you submitted the February 2, 2017, *Fisheries Habitat Restoration 2017 Proposal Solicitation Notice*, the undated *Fisheries Restoration Grant*

Program's General Program Permit Minimization and Avoidance Measures and the Grant Program species minimization and avoidance measures (collectively, biological documents), and requested concurrence with the findings presented therein. In your letter you concluded that the proposed project may affect, but is not likely to adversely affect the federally threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (beetle), giant garter snake (*Thamnophis gigas*) (snake), western distinct population segment of the yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo), and the federally endangered Least Bell's vireo (*Vireo bellii pusillus*) (vireo).

The Corps requested reinitiation of programmatic informal consultation for a five-year extension of this programmatic concurrence letter to correspond with the planned renewal of the Regional General Permit 16, Anadromous Salmonid Fisheries Restoration. The Service is not aware of any new information that would change our analysis in this document. Therefore, the Service agrees to the extension request and hereby extends this programmatic concurrence letter until the expiration of Regional General Permit 16 in 2029. Minor grammatical corrections have been made throughout the document.

We have considered the following in our review of the proposed project: (1) your September 14, 2014, initial request for formal consultation; (2) your October 19, 2018, request for informal consultation; (3) the 2010 California Salmonid Stream Habitat Restoration Manual (Restoration Manual) (Flosi et al. 2010); (4) numerous emails between the Service, the Corps, and the Department; (5) numerous meetings with the Corps and the Department to discuss implementation of the proposed project; and (6) other information available to the Service.

The proposed project includes the funding of program projects that will enhance and restore salmonid habitat with the goal of rebuilding fish populations. Program projects will be proposed annually for various watersheds throughout portions of Shasta, Tehama, Glenn, Butte, Colusa, Yuba, Sutter, Nevada, Placer, Yolo, El Dorado, Sacramento, Amador, Calaveras, San Joaquin, Tuolumne, Stanislaus, Mariposa, Merced, Madera, Fresno, Tulare, and Kings Counties. The Regional General Permit will have a term of 5 years from the date of authorization. This Regional General Permit will also include program projects funded by the Service's Anadromous Fish Restoration Program. This programmatic informal consultation will apply only to Grant Program projects that are located within the counties described above and that occur within the regulatory jurisdictional boundaries of the Sacramento Fish and Wildlife Office. In addition, this letter of concurrence provides a number of agreed upon conservation measures that apply only to the species described herein. The Corps will initiate consultation when appropriate on any program projects that reach the "may affect" threshold for any listed species or critical habitat that are not considered in this letter. In addition, through consultation with the Service, additional species may be included in this informal programmatic if deemed appropriate. This consultation will be effective for the duration of the Regional General Permit and can be extended if deemed appropriate by both the Service and the Corps.

The Grant Program operates on an annual grant cycle, soliciting proposals in the spring. All restoration activities associated with the program are designed to follow the Restoration Manual. Each individual proposal is thoroughly reviewed by the Technical Review Team (composed of personnel from the Department, National Oceanic and Atmospheric Administration / National Marine Fisheries Service, and the California Coastal Salmonid Restoration Grants Peer Review Committee). The Technical Review Team and Peer Review Committee evaluate the benefits of proposals to the fisheries resources and target species, the program project costs, and the impacts to the environment. Once a program project is approved, a Department grant manager is assigned

to a program project to ensure that grantees comply with all of the general and species-specific avoidance and minimization measures that are proposed as part of the program project. Additionally, grant managers ensure grantees adhere to Department polices to protect listed species. Department designated biologists inspect work sites before, during, and after completion of construction program projects. Through careful design, scheduling, and monitoring, effects to federally listed species associated with construction of program projects will be avoided or minimized.

Proposed program applicants will choose from 18 program project types that best describe their proposed restoration projects. Of the 18 program project types, ten of them are considered construction projects as they allow for the implementation or removal of structures that are designed to enhance or restore salmonid habitat. The ten construction project types are described further below:

1) Fish Passage Improvement at Stream Road Crossings (FP) –

   Fish passage improvement program projects attempt to improve or restore salmonid access to spawning and rearing areas blocked by stream crossings such as culverts, bridges, and fords. Volume II, Part IX of the Restoration Manual, entitled *Fish Passage Evaluation at Stream Crossings*, provides consistent methods for evaluating fish passage through culverts at stream crossings, and will aid in assessing fish passage through other types of stream crossings, such as bridges and paved or hardened fords. Fish Passage Improvement projects will result in new or retrofitted crossings where the crossing will be at least as wide as the active channel, will be designed to pass the 100-year storm flow, and will have the culvert invert or piling bottoms buried below the streambed. Fish Passage Improvement Projects may also contain downstream grade control or small fish ladders, if National Marine Fisheries Service and Department engineers believe those features improve the stability and function of the crossing. Volume II, Part XII of the Restoration Manual describes methods and designs for improving fish passage at stream crossings. Program projects that will be authorized through the Regional General Permit must be designed and implemented consistent with the Department *Culvert Criteria for Fish Passage* (Volume II, Part IX, Appendix IX-A, Restoration Manual) and National Marine Fisheries Service Southwest Region *Guidelines for Salmonid Passage at Stream Crossings* (Volume II, Part IX, Appendix DIB, Restoration Manual). In addition, all future program projects that are authorized through the Regional General Permit will require field review, design review, and design approval from a Department or National Marine Fisheries Service fish passage specialist prior to program project implementation.

2) Instream Barrier Modification for Fish Passage Improvement (HB) –

   Instream barrier modification projects attempt to improve salmonid fish passage and increase access to currently inaccessible salmonid habitat. Techniques for improving fish passage are described in Volume I, Part VII of the Restoration Manual, entitled *Project Implementation*. These activities include modifying logjams (typically less than 10 cubic yards), beaver dams, natural waterfalls and chutes, and landslides, to improve salmonid fish passage. The Department will only modify natural features such as these if there is a clear benefit to salmonids. This category also includes the removal and/or modification of flashboard dam structures. Flashboard dams are small, hardened sills spanning the stream channel that impound small sections of stream through placing and removing wooden slats; the structures are most often associated with diversion headgates or pumps

supplying an agricultural water supply. Flashboard dams are typically small, simple structures that trap little sediment upstream of the sill; the potential effects to salmonids from removing or modifying these structures will be in line with effects resulting from culvert removal or replacement projects (i.e., minor, short-term sediment impacts and potential harm from capturing and relocating fish during project construction). Implementing fish passage improvement projects may require heavy equipment use (i.e., self-propelled logging yarders, mechanical excavators, backhoes, etc.); however, hand labor will be used when possible. Although in some cases the Restoration Manual will recommend the use of small explosives to modify a fish passage barrier, this activity will not be analyzed in this letter due to additional effects associated with using explosives. Thus, program projects that utilize explosives will not be authorized through the Regional General Permit.

3) Instream Habitat Improvements (HI) –

Instream habitat structures and improvements are intended to provide escape from predators and resting cover, increase spawning habitat, improve upstream and downstream migration corridors, improve pool to riffle ratios, or add habitat complexity and diversity. These types of program projects may require the use of heavy equipment (i.e., self-propelled logging yarders, mechanical excavators, backhoes, etc.); however, hand labor will be used when possible. Specific techniques for instream habitat improvements are described in Volume I, Part VII of the Restoration Manual, entitled *Project Implementation*, and may include: placement of cover structures (divide logs; digger logs; spider logs; and log, root wad, and boulder combinations), boulder structures (boulder weirs, vortex boulder weirs, boulder clusters, and single and opposing log wing-deflectors), log structures (log weirs, upsurge weirs, single and opposing log wing-deflectors, and Hewitt ramps), or placement of imported spawning gravel. Large woody debris may also be used to enhance pool formation and improve habitat. Selected logs will have a minimum diameter of 12 inches and a minimum length 1.5 times the mean bankfull width of the stream channel reach type at the deployment site. Root wads will have a minimum root bole diameter of five feet, a minimum bole length of 15 feet, and span at least half the channel type bankfull width.

4) Riparian Habitat Restoration (HR) –

The goal of riparian restoration is to improve salmonid habitat through increased stream shading that will lower stream temperatures and increase future large woody debris recruitment, bank stability and invertebrate production. Riparian habitat restoration projects will also restore riparian habitat by increasing plant numbers and plant groupings. Volume II, Part XI of the Restoration Manual describes riparian restoration methods and design, including guidance on natural regeneration, livestock exclusionary fencing, bioengineering, and revegetation projects.

5) Stream Bank Stabilization (HS) –

Reducing sediment delivery to the stream environment will improve fish habitat and fish survival by increasing fish embryo and alevin survival in spawning gravels, reducing juvenile salmonid injury from high concentrations of suspended sediment, and minimizing pool loss from excess sediment deposition. The proposed activities will attempt to reduce sediment from bank erosion by stabilizing stream banks with

appropriate site-specific techniques, including boulder stabilization structures, log stabilization structures, tree revetment, native plant material revetment, willow wall revetment, willow siltation baffles, brush mattresses, check dams, brush check dams, water bars, and exclusionary fencing. Guidelines for stream bank stabilization techniques are described in Volume I, Part VII of the Restoration Manual, entitled *Project Implementation*. Implementing these types of program projects may require the use of heavy equipment (e.g., self-propelled logging yarders, mechanical excavators, backhoes), however, hand labor will be used when possible.

6) Upslope Watershed Restoration (HU) –

Upslope watershed restoration projects attempt to reduce excessive sediment delivery to anadromous salmonid streams. Volume II, Part X of the Restoration Manual, entitled *Upslope Assessment and Restoration Practices*, describes methods for identifying and assessing erosion problems, evaluating appropriate treatments, and implementing erosion control treatments in salmonid watersheds. Road related upslope watershed restoration projects will include road decommissioning, upgrading, and storm proofing. The specific program project elements may include road ripping or decompacting; installing or maintaining rolling dips (critical dips); installing or maintaining waterbars and crossroad drains; removing, replacing, maintaining, or cleaning culverts; outsloping roadbeds; revegetating work sites; and excavating stream crossings with spoils stored on site or end-hauled. Only sites that are expected to erode and deliver sediment to the stream are proposed for restoration work.

7) Fish Screens (SC) –

Screens are utilized to prevent juvenile salmonid entrainment within water diverted for agriculture, power generation, or domestic use. Screens are needed on both gravity flow and pump diversion systems. Current fish screen design standards specify the following screening criteria: 1) perforated metal plate, or mesh material, with openings sized to prevent entrainment of juvenile salmonids; 2) debris cleaning devices, typically brushes, water jets, or compressed air, to prevent plugging; and 3) bypass routes return fish to the stream channel. Normally, a flow measuring device and head gate are also required to monitor and control diversion flows. This section also includes maintenance, cleaning and repair of associated fish screens funded and constructed through the Grant Program. Screen designs are complex and site specific, and many require professional engineering; therefore, specific screen designs are not included within the Restoration Manual. However, Appendix S in the Restoration Manual provides guidelines and criteria for designing functional downstream-migrant fish passage facilities at water withdrawal projects, including guidance on structure placement, approach velocity, sweeping velocity, screen openings, and screen construction. Program projects that are authorized through the Grant Program must be designed and implemented consistent with the most current versions of the Department *Fish Screen Criteria* and the National Marine Fisheries Service Southwest Region *Fish Screening Criteria for Salmonids*, as discussed and referenced in Volume I, Appendix S in the Restoration Manual.

8) Water Conservation Measures (WC) –

Eligible water conservation projects are those that provide more efficient use of water extracted from stream systems, enabling reduced water diversion requirements. Ditch

lining, piping, stockwater systems, and tail-water recovery/management systems are included in this category. Water saved by these water conservation projects must be dedicated to the stream for anadromous salmonid benefits. The Department will not pay for water conservation measures without an instream dedication of the water saved.

9) Water Measuring Devices (Instream and Water Diversion) (WP) –

Eligible water measuring device projects are those that will install, test, and maintain instream and water diversion measuring devices. These devices enable diversions from the stream to be controlled so excess withdrawals can be avoided. The instream gauges must be installed so they do not impede fish passage in anadromous streams.

10) Cooperative Rearing (RE) –

Eligible cooperative fish rearing projects are for artificial propagation programs designed to restore depleted stocks of salmonids that comply with the directives of the joint Department and National Marine Fisheries Service Hatchery Operations Review Committee. The Department only provides grants to program projects supporting Federal and State conservation hatchery programs and the Department's Chinook Salmon Fisheries Enhancement Program. These program projects must meet all of the legal and policy requirements of the Fish and Game Code Section 1200-1206. Proposals for new rearing projects must include detailed justification for estimated production costs. New and existing programs must follow the guidelines outlined in Appendix H of the Recovery Strategy for California Coho Salmon. (https://www.wildlife.ca.gov/Conservation/Fishes/Coho-Salmon). These proposals must also include a proposed five-year management plan that follow guidelines in "Cooperative Fish Production in California" (found in the *California Salmonid Stream Habitat Restoration Manual*, Volume I, Part I, Appendix B). Proposals for established programs must have an approved five-year management plan. Proposals for continued operation of established programs must contain summaries of production costs for the past five years or for the life of the program project if it has operated for less than five years. The Grant Program will only fund the management and operation of fish rearing projects and will not fund design or construction of rearing facilities or purchase of equipment. Proposed marking must be in accordance with Department and Pacific Fisheries Management Council standards. Proposals which do not conform to Department and Pacific Fisheries Management Council standards are ineligible for consideration.

Based on the information provided, and the measures that will be implemented as part of the proposed project, the Service concurs with your determination that the proposed project may affect, but is not likely to adversely affect the beetle, snake, cuckoo, or vireo based on the following factors:

Beetle

1) All elderberry shrubs (*Sambucus* spp.), the sole host plant of the beetle, will be avoided.

2) All program projects will adhere to the minimization and avoidance measures described in the *May 2017, Framework for Assessing Impacts to the Valley Elderberry Longhorn Beetle*.

3) Restoration projects implemented under the proposed project will likely improve the quality of beetle habitat in proposed project areas by increasing the amount of riparian habitat the beetles can utilize.

Snake

1) Snakes utilize slow moving or static water with mud substrates and the absence of continuous canopy of riparian vegetation. The majority of program projects will occur within or near streams and rivers that contain riparian corridors. These habitat characteristics do not provide suitable habitat for the snake.

2) Program projects that occur within suitable habitat for the snake will adhere to the following proposed snake minimization and avoidance measures:

    a. Construction and ground-disturbing activities in suitable habitat for the snake will occur during the snake's active season (May 1 to October 1) when snakes are expected to actively move and avoid danger.

    b. Twenty-four hours prior to the commencement of construction activities, the project area will be surveyed for snakes by a Service-approved biologist. The biologist will provide the Service with a written report that adequately documents the monitoring efforts within 24-hours of commencement of construction activities. The proposed project area will be re-inspected by the monitoring biologist whenever a lapse in construction activity of two weeks or greater has occurred.

    c. Aquatic habitat for the snake will be dewatered, and then remain dry and absent of aquatic prey for 15 days prior to the initiation of construction activities. If complete dewatering is not possible, the Service will be contacted to determine what additional measures may be necessary to minimize effects to the snake.

    d. Prior to October 1st and after aquatic habitat has been dewatered, high visibility fencing will be erected around the habitats of the snake to identify and protect these areas from encroachment of personnel and equipment. These areas will be avoided by all construction personnel. The fencing will be inspected by the Contractor before the start of each work day and maintained by the Contractor until completion of the program project. Fencing will be established in the uplands immediately adjacent to aquatic snake habitat and extending up to 200 feet from construction activities. Snake exclusionary fencing will be buried at least six inches below the ground to prevent snakes from attempting to burrow or move under the fence.

Cuckoo

1) Program activities that occur in suitable breeding habitat (contiguous riparian habitat covering 50 acres or more) will not be conducted from June 1 to August 31.

2) Program project activities will not remove or degrade suitable habitat for the cuckoo.

3) Restoration projects implemented under the proposed project will likely improve the quality of cuckoo habitat in program project areas by increasing the amount of suitable riparian habitat the cuckoos can utilize.

Vireo

1) According to the California Natural Diversity Database (Database), there are known occurrences of the vireo that occur within portions of Yolo, Sacramento, San Joaquin, and Stanislaus Counties. However, the majority of known occurrences for this species are located primarily down in Southern California (Database 2018). Program projects that occur within suitable habitat and are located in Sacramento County or any counties to the south of Sacramento County will adhere to the following minimization and avoidance measures (Measures 2-4):

2) Protocol surveys for the vireo will be conducted at the proposed project sites by a qualified biologist knowledgeable in vireo identification and biology;

3) Proposed project activities will not begin within 0.25 mile of any site with known or potential vireo habitat until after September 15; and

4) Harvest of willow branches at any site with potential habitat for the vireo will not occur between March 1 and September 15.

This concludes the Service's review of the Fisheries Restoration Grant Program Project. No further coordination with the Service under the Act is necessary at this time. Please note, however, that this letter does not authorize take of listed species. As provided in 50 CFR §402.16(a), reinitiation of consultation is required and shall be requested by the federal agency or by the Service where discretionary federal involvement or control over the action has been retained or is authorized by law, and:

1) New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;

2) The identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or

3) A new species is listed or critical habitat designated that may be affected by the identified action.

If you have any questions regarding the proposed Fisheries Restoration Grant Program Project, please contact Adam Stewart, Senior Fish and Wildlife Biologist (adam_stewart@fws.gov), or myself (megan_cook@fws.gov) at (916) 414-6492.

Sincerely,

MEGAN COOK Digitally signed by MEGAN COOK
Date: 2024.05.10 09:21:01 -07'00'

Megan Cook
Sacramento Valley Division Supervisor

LITERATURE CITED

California Natural Diversity Database (Database). 2018. Biogeographic Data Branch, California Department of Fish and Wildlife, Sacramento, California. Accessed October 23, 2018.

Flosi, G., Downie, S., Bird, M., Coey, R., and Collins, R. 2010. Salmonid stream habitat restoration manual, Fourth Edition. California Department of Fish and Wildlife, Sacramento, California.