



**Billing Code: 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-R8-ES-2016-N091; FXES11120808BYD-167-FF08FBDTOO]**

**Proposed Low-Effect Habitat Conservation Plan for the Valley Elderberry  
Longhorn Beetle and Giant Garter Snake; South River Pump Station, Yolo County,  
California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; receipt of permit application; proposed low-effect habitat conservation plan; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from the Sacramento Regional County Sanitation District (applicant) for a 5-year incidental take permit under the endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of two listed animals, the valley elderberry longhorn beetle and giant garter snake, likely to result from the construction of a new flood protection levee and raised all-weather access road around the existing South River Pump Station. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant’s low-effect habitat conservation plan (HCP). We request comments on the application package, which includes the HCP and our preliminary determination that the HCP qualifies as a “low-

effect” HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

**DATES:** To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Submitting Comments:* Please address written comments to Lori Rinek, Section 10 Coordinator, U.S. Fish and Wildlife Service, Bay-Delta Fish and Wildlife Office, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814. Alternatively, you may send comments by facsimile to (916) 930–5654.

*Reviewing Documents:* You may obtain copies of the HCP and EAS from the individuals in **For Further Information Contact**, or from the Bay-Delta Fish and Wildlife Office Web site at <http://www.fws.gov/sfbaydelta>. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Bay-Delta Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Lori Rinek, at the address shown above or at (916)–930–5603.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

We have received an application from the Sacramento Regional County Sanitation District (applicant) for a 5-year incidental take permit under the endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of two listed animals, the valley elderberry longhorn beetle and giant garter snake, likely

to result from the construction of a new flood protection levee and raised all-weather access road around the existing South River Pump Station. Below we refer to both species, collectively, as the covered species. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's low-effect habitat conservation plan (HCP). We request comments on the application package, which includes the HCP, and our preliminary determination that the HCP qualifies as a "low-effect" HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

### **Background Information**

Section 9 of the Act (16 U.S.C. 1531–1544 *et seq.*) and our regulations in the Code of Federal Regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. The term "harass" is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). The term "harm" is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- (1) The taking will be incidental;
- (2) The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- (3) The applicants will develop a proposed HCP and ensure that adequate funding for the HCP will be provided;
- (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (5) The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

### **Proposed Project**

The draft HCP addresses potential effects to the covered species that may result from the proposed activities. The applicant seeks incidental take authorization for covered activities within the 136.4-acre South River Pump Station site, located at 30030 South River Road, in Sacramento County, California. The federally threatened valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (VELB) and the

federally threatened giant garter snake (*Thamnophis gigas*) (GGS) are the covered species in the applicant's proposed HCP.

The applicant would seek incidental take authorization for these two covered species and would receive assurances under our "No Surprises" regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

#### *Proposed Covered Activities*

Construction of a new flood protection levee and raised all-weather access road will result in the permanent removal of 23 elderberry shrubs, considered potential habitat for the VELB, and temporary impacts to 10.775 acres of riparian scrub, ruderal, annual grassland, agricultural crop, and urban vegetation communities considered upland habitat for GGS. The following actions are proposed as the "covered activities" under the HCP: Site preparation; tree removal; transplanting elderberry shrubs, embankment degrade; excavation of inspection trench and borrow material; construction of the levee; construction and removal of temporary access road (if needed); construction of access roads, maintenance roads, and a permanent access road for the borrow site; and site restoration. The applicant seeks a 5-year permit to cover the activities associated with this proposed construction within the 136.4-acre project site.

#### *Proposed Mitigation Measures*

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the HCP. The applicant will satisfy the mitigation requirements by purchasing 55 VELB credits from a

USFWS-approved conservation bank and transplanting the removed elderberry shrubs to the conservation bank, and by restoring temporarily impacted upland GGS habitat to pre-project conditions within the same calendar year (Option 1). If final restoration of a portion of the temporarily impacted upland GGS habitat occurs the calendar year following the initial impact, then the applicant will satisfy additional mitigation requirements by dedicating 0.780 acre of created GGS habitat at the South Stone Lake Giant Garter Snake Mitigation Preserve or through the purchase of mitigation credits from a USFWS-approved conservation/mitigation bank (Option 2). To minimize effects to VELB, the applicant is proposing to implement the avoidance and minimization measures outlined in the *Formal Programmatic Consultation for Projects with Relatively Small Effects on the VELB* (USFWS 1996a) and the *Conservation Guidelines for the VELB* (USFWS 1999a). To minimize effects to GGS, the applicant is proposing to implement the avoidance, minimization, and conservation measures as specified in Appendix C of the *Programmatic Formal Consultation for U.S. Army Corps of Engineers 404 Permitted Projects with Relatively Small Effects on the Giant Garter Snake within Butte, Colusa, Glenn, Fresno, Merced, Sacramento, San Joaquin, Solano, Stanislaus, Sutter and Yolo Counties, California* (USFWS 1997).

#### *Proposed Action and Alternatives*

Our proposed action (see below) is approving the applicant's HCP and issuance of an incidental take permit for take resulting from implementation of the covered activities. As required by the Act, the applicant's HCP considers alternatives to the take under the proposed action. The HCP considers the environmental consequences of two alternatives

to the proposed action: (1) The No Action Alternative; and (2) the West Borrow Site Alternative.

#### No Action Alternative

Under the No-Action Alternative, we would not issue an incidental take permit, the applicant would not build the flood protection levee and access road, the elderberry shrubs and upland GGS habitat would not be disturbed, and the applicant would not implement proposed mitigation measures. While this No-Action Alternative would avoid take of the covered species, it is considered infeasible because should a significant flood event occur along the Sacramento River, sewer service could be impacted for thousands of customers in the communities that Sacramento Regional County Sanitation District serves. For this reason, the No-Action Alternative has been rejected.

#### West Borrow Site Alternative

Under the West Borrow Site Alternative, the borrow material necessary to construct the flood protection levee would be procured from an agricultural field located to the west of the project site, and an alternative haul road would need to be constructed. The West Borrow Site Alternative would impact the same number of elderberry shrubs and acreage of GGS upland habitat as the Proposed Action Alternative. In addition to those impacts, there would be 0.422 acre of GGS aquatic habitat impacts associated with construction of the alternative haul road, as well as an additional 19.58 acres of GGS upland habitat impacts. For this reason, the West Borrow Site Alternative has been rejected.

## Proposed Action

Under the Proposed Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above. The Proposed Action Alternative would result in the permanent removal of 23 elderberry shrubs, considered potential habitat for the VELB and temporary impacts to 10.775 acres of upland habitat for GGS. To mitigate for these effects, the applicant proposes to purchase 55 VELB credits from a USFWS-approved conservation bank and transplant the removed elderberry shrubs to the conservation bank, and restore temporarily impacted upland GGS habitat to pre-project conditions within the same calendar year (Option 1). If final restoration of a portion of the temporarily impacted upland GGS habitat occurs the calendar year following the initial impact, then the applicant will satisfy additional mitigation requirements, in addition to what is proposed in Option 1, by dedicating 0.780 acre of created GGS habitat at the South Stone Lake Giant Garter Snake Mitigation Preserve or through the purchase of mitigation credits from a USFWS-approved conservation/mitigation bank (Option 2).

## **National Environmental Policy Act**

We made a preliminary determination that the applicants' project, including the mitigation measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, issuance of the ITP is a "low-effect" action and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA) (40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1).

Determination of whether a habitat conservation plan qualifies as a low effect is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the other past, present, and reasonably foreseeable projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

### **Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following:

- (1) Our preliminary determination that the applicant's proposal will have a minor or negligible effect on the valley elderberry longhorn beetle and giant garter snake and the HCP qualifies as a low-effect HCP.
- (2) Biological information concerning the species;
- (3) Relevant data concerning the species;

- (4) Additional information concerning the range, distribution, population size, and population trends of the species;
- (5) Current or planned activities in the subject area and their possible impacts on the species; and
- (6) Identification of any other environmental issues that should be considered with regard to the proposed project and permit action.

You may submit your comments and materials by one of the methods listed above in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

### **Public Availability of Comments**

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Next Steps**

We will evaluate the permit application, including the HCP and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. We will also evaluate whether issuance of the incidental take permit would

comply with section 7(a)(2) of the Act by conducting an intra-Service consultation pursuant to section 7(a)(2) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the valley elderberry longhorn beetle and giant garter snake from the implementation of the covered activities described in the low-effect Habitat Conservation Plan for the valley elderberry longhorn beetle and giant garter snake, South River Pump Station, Sacramento, California. We will make the final permit decision no sooner than 30 days after publication of this notice in the **Federal Register**.

**Authority**

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*; NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*; Act).

**Kaylee Allen,**

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*Bay-Delta Fish and Wildlife Office,*

*Sacramento, California.*

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