



September 15, 2005

Christopher C. Elliott  
Jones & Stokes  
2600 V Street  
Sacramento, CA 95818-1914

Dear Mr. Elliott:

The Department of Fish and Game (Department) received your request on behalf of the Three Rivers Levee Improvement Authority for a determination that U.S. Fish and Wildlife Service Biological Opinion No. 1-1-05-F-0106 is consistent with the California Endangered Species Act (CESA) as to anticipated take of the giant garter snake (*Thamnophis gigas*).

The Department has determined that the above-referenced biological opinion, which concerns Stage 1 of the Proposed Feather River, Bear River, and Western Pacific Interceptor Canal Levee Improvement Project (Corps Regulatory No. 200400685), Yuba County, California, is consistent with CESA. A copy of that determination is enclosed for your records. If you have any questions, please contact Mr. Ian Drury, Environmental Scientist, (916) 358-2030, or Mr. John Nelson, Senior Environmental Scientist, (916) 358-2944.

Sincerely,

  
Banky E. Curtis  
Deputy Director

Enclosure

cc: Mr. Kent McClain, Three Rivers Levee Improvement Authority

Sandra Morey, John Nelson, Ian Drury, Kent Smith  
Department of Fish and Game  
Sacramento Valley Central Sierra Region

Scott Flint,  
Department of Fish and Game  
Habitat Conservation Planning Branch

**CALIFORNIA DEPARTMENT OF FISH AND GAME**  
**CONSISTENCY DETERMINATION**  
Fish and Game Code Section 2080.1  
CESA No. 2080-2005-021-02

**PROJECT:** Stage 1 of the Feather River, Bear River, and Western Pacific  
Interceptor Canal Levee Improvement Project

**LOCATION:** Yuba County

**PROJECT PROPONENT:** Three Rivers Levee Improvement Authority

**BACKGROUND:**

The Three Rivers Levee Improvement Authority (TRLIA) is proposing improvements to the flood management system in southern Yuba County, including segments of the Feather River, Bear River, and Western Pacific Interceptor Canal (WPIC). Improvements for Stage 1 of the overall project are collectively termed the Feather-Bear-WPIC Levee Project (hereafter, the "Project"). Stage 2 actions will be pursued under separate authorizations. The proposed Project is located in southwestern Yuba County near the confluence of the Bear and Feather Rivers. The main features of the proposed Project are a new setback levee, environmental enhancement of the new setback area, and mitigation for any environmental impacts. Activities associated with construction of the Project will result in potential take of giant garter snake (*Thamnophis gigas*), which is listed as threatened under the California Endangered Species Act, Fish and Game Code sections 2050 et seq. (CESA).

Because of the Project's potential for take of the giant garter snake, the U.S. Army Corps of Engineers (ACOE) consulted with the U.S. Fish and Wildlife Service (Service) as required by the Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). On August 10, 2005, the Service issued Biological Opinion No. 1-1-05-F-0106 which considers the Project and sets forth measures to mitigate impacts to the giant garter snake. On August 16, 2005 the Department of Fish and Game (Department) received a notice from TRLIA pursuant to Fish and Game Code Section 2080.1, requesting a determination that the federal Biological Opinion is consistent with CESA for the proposed Project. In a letter dated September 8, 2005, TRLIA's consultant Jones & Stokes proposed, on behalf of TRLIA, additional mitigation/compensation measures for the project that would supplement the mitigation set forth in the Biological Opinion.

**DETERMINATION:**

Based on the terms and conditions in the Service's Biological Opinion No. 1-1-05-F-0106, as supplemented by the September 8, 2005 letter, the Department has determined that the Biological Opinion is consistent with CESA because the Project and mitigation measures meet the conditions set forth in Fish and Game Code section 2081(b) and (c) for authorization of incidental take of species protected under CESA. Important to the Department's findings are measures from the Biological Opinion and the September 8 letter which address expected or potential impacts to the giant garter snake. These measures include, but are not limited to, the following requirements:

1. Work within potential snake habitat will occur between May 1 and October 1, which coincides with the active season of the giant garter snake, except as specifically provided in the Biological Opinion and the September 8 letter.
2. Within 24 hours prior to initiation of construction activities, or a break (two weeks or more) in construction activity, an approved biologist will survey the site.
3. When working in aquatic areas capable of supporting prey for the giant garter snake, TRLIA will dewater the habitat 15 days prior to the initiation of construction activities. An approved biological monitor will be present during all dewatering activities.
4. Construction personnel will participate in an approved worker environmental awareness training program. Under the guidelines of this program, workers shall be informed about the presence of snakes and habitat associated with the species and that unlawful take of the animal or destruction of its habitat is a violation of ESA. Prior to construction activities, a qualified biologist shall instruct construction personnel about: the life history of the snake; the importance of irrigation canals, marshes/wetlands, and seasonally flooded areas, such as rice fields, to the species; and the terms and conditions of the Biological Opinion.
5. Movement of heavy equipment to and from the Project site shall be restricted to established roadways to minimize habitat disturbance.
6. Any erosion control matting will not include monofilament or plastic; the matting will be comprised of jute, straw, coconut matting, or other natural fibers.
7. TRLIA will restore 96.12 acres of temporarily affected giant garter snake habitat at the Project site according to the *Guidelines for Restoration and/or Replacement of Giant Garter Snake Habitat* and the *Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake (*Thamnophis gigas*) Habitat*. TRLIA will continue to monitor the restored area for one year following construction and restoration activities and report to the Service to ensure success of the restoration.

8. TRLIA will mitigate for permanent impacts to giant garter snake by purchasing the equivalent of 134.37 acres of giant garter snake habitat in a Service-approved conservation bank prior to any construction within habitat for this species. If mitigation credits are not immediately available from an approved conservation bank, and if it is determined by the Service and the Department that no other mitigation site is immediately available, TRLIA shall place the sum of \$4,702,950.00 in an escrow account prior to initiating construction activities. The purpose of this account is to ensure funding for the acquisition and long-term management of habitat consistent with the requirement to mitigate for 134.37 acres for the giant garter snake. Both the Service and the Department will have authority over disbursements from the escrow account. If, after 18 months from the initial date of deposit into the account, funds have not been expended to meet the required mitigation, the Service and the Department will meet, and at their discretion, may choose to specifically identify how and where the required mitigation shall be applied. In either case, at the time that the mitigation is put in place, should the actual cost of land and long-term management be determined to exceed the amount in the escrow account, TRLIA agrees to make up the difference in order to ensure that the mitigation requirement is fully implemented.

Pursuant to Fish and Game Code section 2080.1, authorization under CESA will not be required for incidental take of giant garter snake for the Project, provided that TRLIA implements the Project as described in the Biological Opinion, complies with the mitigation measures described in the Biological Opinion, and implements the supplemental mitigation (as described above and contained in the September 8, 2005 letter). If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the Biological Opinion to include impacts or mitigation that are not addressed in the Biological Opinion or the September 8, 2005 letter, TRLIA will be required to obtain a new consistency determination or a CESA incidental take permit from the Department.

By: Banky E. Curtis  
Banky E. Curtis, Deputy Director  
California Department of Fish and Game

Date: Sept 14, 2005