



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Palm Springs Fish and Wildlife Office
777 East Tahquitz Canyon Way, Suite 208
Palm Springs, California 92262



In Reply Refer To:
FWS-SB-16B0182-17F0387-R001

August 11, 2017
Sent by Email

Mr. Douglas E. Eberhardt
Manager, Infrastructure Section
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Attention: Elizabeth Borowiec

Subject: Re-initiation of Formal Section 7 Consultation on the Proposed Sterling Natural Resource Center, San Bernardino County, California

Dear Mr. Eberhardt:

On March 9, 2017, we issued biological opinion FWS-SB-16B0182-17F0387 that addressed impacts to the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*; SBKR) and the federally threatened Santa Ana sucker (*Catostomus santaanae*; SAS) and their respective designated critical habitats for the issuance of federal funding [Clean Water State Revolving Fund (CWSRF)] by the U.S. Environmental Protection Agency (EPA) for the construction and operation of the Sterling Natural Resources Center (project). The EPA has delegated the administration of the CWSRF program to the states, including California, under the federal Clean Water Act (CWA), to assist in funding projects intended to improve water quality. The Division of Financial Assistance of the State Water Resources Control Board (State Water Board) administers the CWSRF program in California pursuant to 40 Code of Federal Regulations (CFR) Part 35, Subpart K. East Valley Water District (EVWD), in cooperation with the San Bernardino Valley Municipal Water District (Valley District), is the non-Federal applicant.

The biological opinion analyzed the temporary and permanent impacts associated with the construction of the SNRC facility, new pipeline, and associated outlet structures in the City of Highland, City Creek, and Redlands Basins, and the reduction of effluent flow to the Santa Ana River downstream of the Rapid Infiltration and Extraction (RIX) treatment plant discharge outlet. On June 27, 2017, we received a letter from the State Water Board dated June 22, 2017, requesting changes to the project description related to the roles and responsibilities of the EPA and State Water Board associated with the conservation measures that require ongoing implementation. This amendment addresses the roles and responsibilities of both the EPA and State Water Board associated with the implementation of the SNRC conservation measures.

The State Water Board, under guidance from the EPA, is proposing that the EPA and State Water Board will remain responsible for implementation of the Terms and Conditions of the biological opinion's incidental take statement until funds are disbursed and project implementation is complete, or they no longer retain discretionary involvement or control over the project, as described in 1 and 2, below:

1. If an incidental take permit is issued for the Upper Santa Ana River HCP, prior to completion of the EPA and State Water Board actions and the HCP addresses any outstanding or ongoing project conservation measures, the USFWS will notify the EPA and State Water Board that the terms of the biological opinion have been met.
2. If the permit for the HCP is not issued 6 months prior to the anticipated completion of the project implementation, any unfulfilled obligations, including ongoing management of conservation lands included in the project description by EVWD, will be endowed and taken over by a conservation land manager identified by Valley District. Valley District will establish, subject to the approval of the State Water Board, USFWS, and EPA, an appropriate instrument to hold and disperse funds, identify an endowment manager to regulate disbursement of funds, and identify a conservation land manager. Valley District will evaluate the adequacy of the endowment with a property analysis record, or equivalent analysis, approved by the USFWS. Once the conservation land manager has been identified and engaged and the funding instrument has been established and funded, the USFWS will notify the EPA and State Water Board that terms of the biological opinion have been met.

After reviewing the modification of the project description, we have determined that the requested changes to the Project description do not affect the analysis of impacts to SAS, SBKR, or their respective designated critical habitats, the amount or extent of take we expect to result from the proposed action or the conclusions in the original biological opinion (FWS-SB-16B0182-17F0387).

This concludes reinitiated formal consultation regarding the maintenance roads and activities for the Sterling Natural Resource Center project outlined in materials submitted to us. As provided in 50 CFR §402.16 reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; and (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions or comments about this consultation, please contact Kai Palenscar of this office at 760-322-2070, extension 408.

Sincerely,

KENNON COREY

Digitally signed by KENNON
COREY
Date: 2017.08.11 16:10:04 -07'00'

Kennon A. Corey
Assistant Field Supervisor

cc:

Ahmad Kashkoli, Senior Environmental Scientist, State Water Board
Cedric Irving, Environmental Scientist, State Water Board
Heather Dyer, Water Resources Project Manager, Valley District