



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

NOV 27 2012

In response refer to:
2012/9298

William J. Leady, P.E.
Colonel, U.S. Army
Commander
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, California 95814-2922

Dear Colonel Leady:

I am writing in response to requests from the U.S. Army Corps of Engineers (Corps) for the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) to address certain issues associated with implementing the actions in the Reasonable and Prudent Alternative (RPA) of the biological opinion for the Continued Operation and Maintenance of Englebright Dam and Reservoir, Daguerre Point Dam, and Recreational Facilities On and Around Englebright Reservoir (February 29, 2012) (Yuba BiOp). The Yuba BiOp finds that the operation and maintenance of these two dams jeopardizes the continued existence of Central Valley spring Chinook salmon, Central Valley steelhead, and the Southern distinct population segment of North American green sturgeon, and results in the adverse modification of their critical habitat. The BiOp includes a reasonable and prudent alternative (RPA) that modifies the proposed action to avoid jeopardizing the species and adversely modifying their critical habitat.

At the outset, we acknowledge the ongoing effort to review the many comments we have received from the Corps and other parties in the Yuba River watershed on the final biological opinion, the RPA, and the incidental take statement issued pursuant to the biological opinion. We understand that the Corps intends to develop a new biological assessment and request reinitiation of consultation for the Corps' dams on the Yuba River. NMFS will consider the current RPA elements in the context of any new consultation. To expedite the resolution of these issues, including the development of any new biological opinion, NMFS will continue to work with the Corps' staff and others to find ways to address the legal and technical issues associated with the current Yuba BiOp. We look forward to completing this process in an orderly and collaborative manner that will enable all parties to make rapid and steady progress in implementing measures, consistent with their legal authorities that can contribute to the long-term conservation of listed species and their habitats in the Yuba Basin.

In the meantime, we also recognize that a number of measures in the existing RPA contain deadlines that cannot be met for practical reasons, such as a lack of appropriations, or the length of time required to comply with the National Environmental Policy Act, among other



implementation challenges. Accordingly, a central purpose of this letter is to adjust certain schedules and timelines, as described below. The changes to the schedule are minor modifications. These changes include changes to dates for establishment of committees, development of a channel restoration plan, development of a predator reduction and monitoring plan, development of a salmonid monitoring and adaptive management plan, and a green sturgeon conservation and management plan. In making these schedule adjustments NMFS also recognizes that the Corps is improving habitat through gravel augmentation and placing large woody material in the lower Yuba River. NMFS also recognizes that the Corps is implementing improved management of the fish ladders and Daguerre Point Dam, and is maintaining the fish pathways upstream of Daguerre Point Dam. In making these minor modifications in the anticipated schedules, we have concluded that they are consistent with the underlying biological opinion and the incidental take which is authorized by the biological opinion. The minor alterations to the schedules and timelines identified in this letter do not alter our conclusion that the RPA will not likely jeopardize anadromous fish species listed under the Endangered Species Act because they are not expected to affect substantially the long term viability of the ESA listed anadromous fish species that may be impacted by the Corps' operations and maintenance of their Yuba River dams.

In recognition of the foregoing, we have identified the following changes to the schedules in the existing RPAs, subject to Congressional appropriations for Corps implementation:

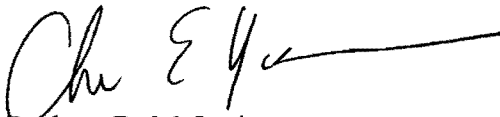
1. RPA Action 2. Near-Term Fish Passage Actions, NTFP 1
 - a. NTFP 1. Formation of Yuba Interagency Fish Passage Committees. By December 2012 [change to: by October 2013] committee to be established.
 - b. NTFP 2. Evaluation of Salmonid Spawning and Rearing Habitat Upstream of Dams. Immediately-January 2013 [change to: October 2013 – April 2014] Compile and summarize information about fish habitat upstream of Englebright Dam.
 - c. NTFP 6. Daguerre Point Dam Fish Passage Improvement, feasibility and PED by November 21, 2012 [change to: November 21, 2015].
2. RPA Action 5. Channel Restoration Program, plan development by December 2012 [change to: December 31, 2015].
3. RPA Action 6. Predator Control Plan.
 - a. PC 1. By September 1, 2012 [change to: June 1, 2013] provide a predator reduction and monitoring plan. Corps will meet with both agency and local experts to identify potential predator species and develop a survey plan to confirm presence, timing and locations of these species.
 - b. PC 1. By November 1, 2012 [change to January 2015] implement the predator reduction and monitoring plan.
4. RPA Action 7. Salmonid Monitoring and Adaptive Management Program
Implement immediately [change to: December 31, 2015].

5. RPA Action 8. Green Sturgeon Monitoring and Adaptive Management
 - a. GS 1. Green Sturgeon Conservation and Management Program
Implement immediately [change to: June 2014].
 - b. GS 2. Green Sturgeon Technical Sub-Committee, to be created within 6 months (8/29/2012). [change to: by June 2014]
 - c. GS 5. Near Term Green Sturgeon Actions for Green Sturgeon. By February 28, 2013, develop annual conservation, monitoring and management plans. [Change to December 31, 2015].

NMFS believes that the modifications to the schedule and timelines described above are minor and consistent with the purpose of the RPA, which is to avoid jeopardizing the continued existence of Central Valley spring Chinook salmon, Central Valley steelhead, and the Southern distinct population segment of North American green sturgeon, and adversely modifying their critical habitat, in a manner that can be implemented consistent with the intended purpose of the action, is consistent with the Federal agency's legal authority and jurisdiction, and is economically and technically feasible (50 CFR 402.02). Additionally, NMFS does not believe that the modifications meet the criteria to reinstate consultation, but that they maintain consistency with the specific objectives of each RPA action in the Yuba BiOp.

NMFS recognizes that the Corps has made progress implementing certain RPA action elements such as the operation and maintenance of the Daguerre Point Dam fish ladders and associated sediment removal; the Gravel Augmentation Program; and the Large Woody Material Program. Because NMFS cannot foreclose the possibility that some of the current RPA measures may be incorporated into a future consultation, we believe that continued steady progress on them is altogether appropriate in the interim. During this interim period, prior to the issuance of a new biological opinion, NMFS' expectation is that the Corps will continue to seek the necessary funding to implement the existing reasonable and prudent alternative, and the reasonable and prudent measures.

Sincerely,

FOR 
Rodney R. McInnis
Regional Administrator

cc: Copy to file: 151422SWR2006SA00071
Corps, Randy Olsen
Corps, Doug Grothe
YCWA, Curt Aikens