

Appendix B: U.S. Fish and Wildlife Service Concurrence Memorandum



United States Department of the Interior



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FISH AND WILDLIFE SERVICE
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STATION
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Memorandum

To: Chief, Resource Management Division, Bureau of Reclamation, Mid-Pacific Region

From: Patricia Cole, Chief, San Joaquin Valley Division, Sacramento Fish and Wildlife Office, Sacramento, California *Patricia Cole*

Subject: Informal Consultation on the City of Huron Treated Effluent Recycling Project, Fresno County, California

This memorandum responds to the U.S. Fish and Wildlife Service's (Service) September 23, 2016 receipt of your September 20, 2016 request for concurrence with the determination that the proposed City of Huron Treated Effluent Recycling Project (Project) may affect, but is not likely to adversely affect (NLAA) the federally-listed as endangered San Joaquin kit fox (*Vulpes macrotis mutica*).

The Project will convert 188 acres of Bureau of Reclamation (Reclamation) owned land into an alfalfa field that will be irrigated with water from the City of Huron Wastewater Treatment Plant (WWTP).

Reclamation has requested initiation of informal consultation under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). Our response is based on the following information: (1) an initial biological evaluation (BE) dated September 2016; (2) a consultation request letter dated September 20, 2016; (3) phone conversations and email exchanges in November 2016; (4) a habitat assessment report dated December 22, 2016; and (5) other information available to the Service.

Project Description

The Project will convert 188 acres of Reclamation-owned land into an alfalfa field that will be irrigated with treated effluent from the WWTP for a period of 25 years. The Project would include the establishment of dirt access roads, installation of perimeter fencing and earthen berms, excavation of a tailwater pond, grading, and all activities required to install and maintain the irrigation system. The Project is located in southwestern Fresno County just northeast of Huron.

A 16-foot wide dirt access road will be established around the perimeter of the Project area and will be enclosed by a barbed wire fence. A 3-foot earthen berm will be constructed around the perimeter of the alfalfa field in order to prevent effluent from entering adjacent properties. A 6-foot deep tailwater pond that will be used to collect run-off from the field for reuse will be constructed in the

southeastern corner of the Project area. Pipes and diversion structures will be installed across the Project to deliver the water to the alfalfa. Construction will be completed with excavators, scrapers, and other earth-moving equipment. All construction equipment will be staged within the enclosed boundaries of the WWTP. After construction, the site will be planted in alfalfa which will be mechanically harvested 4 to 5 times a year. The planting and harvesting will be accomplished using standard farm equipment (tractors, cutters, bailers, etc.).

Habitat within the Project area is non-native grassland. The predominate vegetative cover is composed of non-native herbaceous plants including barley (*Hordeum* sp.), red brome (*Bromus rubens*), London rocket (*Sisymbrium irio*), and red-stemmed filaree (*Erodium cicutarium*). Mule fat (*Baccharis salicifolia*) and Russian thistle (*Salsola tragus*), and a single tamarisk (*Tamarix* sp.) were the only shrubs found in the Project area. The Project is bounded to the north and east by non-native grassland and saltbush scrub habitats that comprise the Arroyo-Pasajero Westside Detention Basin (Basin). Surrounding land uses include residential development (city of Huron), developed agriculture, and the WWTP.

Walking transects were completed on December 7 and 8, 2016 to search for San Joaquin kit fox sign, map small mammal burrows, and conduct a habitat assessment. The most abundant burrows on the Project area were those made by California ground-squirrels (*Otospermophilus beecheyi*). Biologists also identified a number of smaller burrows that appeared to be those of kangaroo rat (*Dipodomys* sp.) and other small mammals. No kit fox dens or sign (tracks or scat) were observed during the surveys. The non-native grassland habitat within the Project could provide suitable denning or foraging habitat for the kit fox. According to the California Natural Diversity Database (CNDDB), the closest record of kit fox is approximately 1.5 miles southwest along the California Aqueduct. Several other observations along the Aqueduct indicate that the kit fox use it as a movement corridor. The Project is not within any of the habitat units or links identified in the 1998 *Recovery Plan for Upland Species of the San Joaquin Valley, California*. The lack of dens, kit fox sign, or other evidence of kit fox use of the area indicate that any kit fox use of the Project is likely transitory. Although some suitable non-native grassland will be removed as a result of the Project, the Project comprises only 5% of the larger Basin. Suitable habitat within the Basin will continue to support any kit fox that may be using the area and the Project will not preclude kit fox movement along the Aqueduct. The conversion of non-native grassland to irrigated alfalfa will reduce, but not eliminate the available small mammal prey base in the area as small mammals are expected to persist both around and within the irrigated alfalfa. Therefore, effects to the San Joaquin kit fox as a result of project implementation are expected to be discountable.

Conservation Measures

As part of the Project, Reclamation staff and its contractors will implement Avoidance and Minimization Measures (AMM) and Best Management Practices prior to and during construction activities to minimize and avoid effects to federally-listed species. The AMM's include the following:

1. A pre-construction survey will be conducted no fewer than 14 days and no more than 30 days prior to the beginning of ground disturbance or other general construction activities that could affect the San Joaquin kit fox. If any new dens are discovered or the potential dens show signs of use, avoidance of the dens will follow the *USFWS Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox Prior to or During Ground Disturbance*. If a natal/pupping den is discovered within the Project area or within 200-feet of the Project boundary, the Service shall be notified and, under no circumstances, should the den be disturbed or destroyed without an Incidental Take Statement.

2. Project-related vehicles will observe a 20-mph speed limited in all Project areas, except on County roads and State and Federal highways. Night-time construction will be prohibited. Off-road traffic outside of the designated action area will be prohibited.
3. To prevent the inadvertent entrapment of San Joaquin kit fox or other animals during the construction phase of the Project, all excavated steep-walled holes or trenches more than 2-foot deep will be covered at the close of each working day by plywood or similar materials. If trenches cannot be covered, one or more escape ramps constructed of earthen-fill or wooden planks will be installed. Before such holes or trenches are filled, they will be thoroughly inspected for trapped animals. If a trench or hole is left covered for more than 24 hours, it will be inspected daily for trapped animals until the excavation is filled.
4. All construction pipes, culverts, or similar structures with a diameter of 4-inches or greater that are stored at the construction site for one or more overnight periods will be thoroughly inspected for the presence of San Joaquin kit fox before the pipe is subsequently buried, capped or otherwise used or moved in any way.
5. All food-related trash items such as wrappers, cans, bottles, and food scraps will be disposed of in securely closed containers and removed daily from the Project site.
6. No pets, such as dogs or cats, will be permitted on the Project site to prevent harassment, mortality of San Joaquin kit fox, or destruction of dens.
7. Use of rodenticides will be prohibited. Use of herbicides in the Project area will be restricted. All uses of such compounds will observe label and other restrictions mandated by the U.S. Environmental Protection Agency, California Department of Food and Agriculture, and other State and Federal regulation.
8. No firearms will be allowed in the Project area.
9. A representative will be appointed by the Project proponent who will be the contact source for any employee or contractor who might observe a San Joaquin kit fox. The representative will be identified during the employee education program and their name and telephone number will be provided to the Service. Any contractor, employee or agency personnel who inadvertently kills, injures, or notices an entrapped kit fox shall immediately report the incident to the representative. All work shall stop on the Project until Reclamation and the Service can identify appropriate measures needed to continue work and avoid take, or Reclamation obtains an Incidental Take Statement.
10. Prior to the start of construction, a qualified biologist will conduct an employee education program to train all construction staff that will be involved with the Project on the San Joaquin kit fox. This training will include a description of the kit fox and its habitat needs, a report of the occurrence of kit foxes in the Project area, an explanation of the status of the species and its protection under the Endangered Species Act, and a list of measures being taken to reduce impacts to the kit fox during Project construction and implementation. A fact sheet conveying this information will be prepared for distribution to all personnel who may enter the Project area.

11. New sightings of San Joaquin kit fox will be reported to the CNDDDB. A copy of the reporting form and a topographic map clearly marked with the location of where the kit fox was observed will be provided to the Service at the letterhead address.

Conclusion

The Service concurs with your determination that the project may affect, but is not likely to adversely affect the San Joaquin kit fox. Our concurrence with NLAA for this Project is based on the ability of the kit fox to continue to move through the Project area, the lack of evidence of kit fox use of the Project area, the ability of the Project to continue to support a limited prey base for the kit fox, and the environmental commitments in Reclamations' September 2016 consultation request letter and September 2016 biological assessment. Environmental commitments for the Project include: environmental awareness training, preconstruction surveys, and the restriction of work to daylight hours only. This concludes the Service's review of the Project. No further coordination with the Service under the Act is necessary at this time. Please note, however, this letter does not authorize take of listed species. As provided in 50 CFR §402.14, initiation of formal consultation is required where there is discretionary Federal involvement or control over the action (or is authorized by law) and if: 1) new information reveals the effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this review; 2) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this review; or 3) a new species is listed or critical habitat designated that may be affected by the action.

If you have questions regarding this action, please contact Tim Ludwick, Fish and Wildlife Biologist, at the letterhead address or at (916) 414-6551.

cc:

Craig Bailey, California Department of Fish and Wildlife, Fresno, CA