



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

JUL 15 2005

July 12, 2005

In response refer to:  
151422SWR05SA20094:HLB

Michael Finan  
Chief, Delta Office  
U.S. Army Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

Dear Mr. Finan:

This letter responds to your March 28, 2005, request for formal consultation with NOAA's National Marine Fisheries Service (NMFS), pursuant to the Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act for a U.S. Army Corps of Engineers (Corps) permit to the Three Rivers Levee Improvement Authority (TRLIA) for stage one of the Feather-Bear-Western Pacific Interceptor Canal (WPIC) Levee project (No. 200400685). The project is located near Marysville, in Yuba County, California. You have determined that the Feather-Bear-WPIC Levee project is likely to adversely affect Federally listed threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and the proposed critical habitat of Central Valley spring-run Chinook salmon and Central Valley steelhead, and the Essential Fish Habitat (EFH) of Pacific salmon. Your letter also requests that NMFS recommend project modifications that would avoid or minimize impacts to anadromous fish and their habitat and preclude the need for formal consultation.

NMFS previously responded to your letter on April 28, 2005, and found that all of the information necessary to initiate formal consultation was not provided. NMFS provided a list of information needs, and recommended measures that would avoid and minimize adverse impacts to anadromous fish. Jones and Stokes, the Corp's designated representative for the ESA consultation, has since provided NMFS with the requested information in a final biological assessment and EFH assessment.

The proposed action includes reconstruction of portions of the existing Bear River levee, construction of a foundation for a new set-back levee, and removal of an existing walnut orchard in the Bear River floodway. Levee reconstruction will include placement of approximately 400 linear feet (lf) of rock riprap, raising approximately 700 lf of the levee surface, and installation of approximately 900 lf of impervious clay into the water side of the levee. Construction of the new levee foundation will include installation of tie-ins to the existing levee, excavation of an inspection trench, construction of a slurry wall below the land surface, and compaction of the levee foundation. Up to 70 acres of walnut orchard will be removed within the floodway to facilitate floodwater conveyance at the confluence of the WPIC.



The project has been planned and designed with priorities of avoiding and minimizing effects to anadromous fish and their habitat. In-channel project activities will occur during summer and fall months when anadromous fish are not likely to be present within the action area. Contractors will be required to implement a storm water protection plan, and best management practices to prevent foreign materials from entering the waters of the Bear and Feather Rivers. The project will avoid impacting shaded river aquatic (SRA) cover and other aquatic habitats, wherever possible. TRLIA will compensate for impacts to SRA cover and riparian vegetation by replacing lost features at a 3:1 ratio. Replacement of lost features will occur at bank protection sites by incorporating native woody vegetation in the rock slope protection. Additional riparian vegetation and SRA cover will be established in flood damaged areas of the orchard removal area, along the Bear River. To ensure the effectiveness of compensation measures, TRLIA will implement a habitat conservation plan that will include measurable objectives, performance measures, monitoring methods, and remedial actions. A future stage two of the Feather-Bear WPIC Levee project is expected to occur in 2006. Stage two will construct the setback levee, and remove much of the lower Bear River levee and portions of the Feather River levee. The project will substantially increase floodplain area, and juvenile rearing and refugia habitat behind the setback levee.

#### ESA Section 7 Consultation


NMFS has received the information necessary to initiate consultation on Federally listed salmonids within the proposed project area. Based on our review of the material provided with your request, and the best scientific and commercial information currently available, NMFS has determined that the proposed Feather-Bear WPIC Levee project is not likely to adversely affect Central Valley spring-run Chinook salmon, Central Valley steelhead, or proposed critical habitat for Central Valley spring-run Chinook salmon and Central Valley steelhead. This determination may be reconsidered and further consultation may be necessary if one of the following occurs: (1) new information suggests the proposed project may affect listed species or critical habitat in a manner or to an extent not described in the biological assessment or considered in this review; (2) new species critical habitat are designated that may be affected by the proposed action; or (3) the project description is changed. This concludes ESA section 7 consultation for the proposed project. This concurrence does not provide incidental take authorization pursuant to section 7(b)(4) and section 7(o)(2) of the ESA.

#### Essential Fish Habitat Consultation

We also have reviewed this project for impacts to EFH for Pacific salmon and under section 305(b)(2) of the MSA, and find that implementation of the project will not adversely affect EFH for Pacific salmon; therefore, we do not have any extra conservation recommendations for the proposed action.

Please contact Howard Brown at (916) 930-3608, or via e-mail at [howard.brown@noaa.gov](mailto:howard.brown@noaa.gov) if you have any questions concerning this project, or require additional information.

Sincerely,

  
for Rodney R. McInnis  
Regional Administrator

cc: NMFS-PRD, Long Beach, California

Chris Elliot, Jones and Stokes, 2600 V Street, Sacramento, California, 95818

Bill Mitchell, Jones and Stokes, 2600 V Street, Sacramento, California, 95818