



# Jones & Stokes

September 8, 2005

Mr. Peter Cross  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825

**Subject:** Request for Acceptance of Proposed Giant Garter Snake and Vernal Pool Crustacean Mitigation for the Feather-Bear-WPIC Levee Improvements Project (U.S. Fish and Wildlife Service Biological Opinion No. 1-1-05-F-0106)

Dear Mr. Cross:

This letter is written on behalf of the Three Rivers Levee Improvement Authority (TRLIA) as a follow-up to the Biological Opinion for the subject project. As a first note, we express our sincere thanks for the high level of cooperation and flexibility your agency has demonstrated throughout this process. The purpose of this letter is to present a more specific plan to mitigate for giant garter snake (GGS) and vernal pool crustacean (VPC) impacts resulting from the project, with a secondary purpose to facilitate a consistency determination with the Biological Opinion on GGS from the California Department of Fish and Game (CDFG) in terms of financial assurance and a specific time frame for implementation of mitigation. This letter is to be considered as an amendment to TRLIA's project description, and your acceptance is requested in writing as a condition of the Biological Opinion.

Based on our understanding from communication with Jennifer Hobbs from your agency and John Nelson and Ian Drury from CDFG, the mitigation is to be conditioned as follows.

## **Giant Garter Snake**

To mitigate for impacts to GGS, the U.S. Fish and Wildlife Service (USFWS), in its Biological Opinion No. 1-1-05-F-0106, has required the purchase of the equivalent of 134.37 acres of GGS habitat in a USFWS-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 USFWS and CDFG that no other mitigation site is immediately available, prior to initiating construction activities, TRLIA shall place the sum of \$4,702,950 in an Escrow Account. The purpose of this Escrow Account is to wholly finance the acquisition and long-term management of habitat consistent with the requirement to mitigate for 134.37 acres for GGS.

USFWS and DFG shall be named as beneficiaries to the Escrow Account. Within 18 months of the initial date of deposit into the Escrow Account, TRLIA agrees to utilize the Escrow Account funds in a manner that fully satisfies their mitigation requirement for this species for the subject project (purchase of credits from an approved conservation bank or purchase and restoration of real property). If, after 18 months from the initial date of deposit into the Escrow Account, funds have not been expended by TRLIA to meet the required mitigation, USFWS and CDFG will meet, and at their discretion, may so 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 pay the difference in order to ensure that the mitigation requirement is fully implemented.

As additional context for your consideration, the funding amount necessary to fulfill the mitigation requirement is valued at \$35,000 per acre ( $134.37 \times \$35,000 = \$4,702,950$ ). This value is supported by a Purchase Agreement from a well-established commercial mitigation banking enterprise (Wildlands, Inc.). It is understood that USFWS and CDFG have indicated preliminary acceptance of Wildlands, Inc.'s Tule Basin site as suitable mitigation for the project's GGS impacts. The TRLIA Board approved a Purchase Agreement (including financial terms) with Wildlands, Inc., on September 6, 2005, for mitigation of GGS at this site and will provide a copy to USFWS and CDFG upon final execution.

In addition to your acceptance of the mitigation approach detailed above, TRLIA further requests USFWS acceptance that construction will be permitted in GGS areas up to November 1. The subject Biological Opinion conditionally allows construction up to November 1 in the areas near the Feather River. It is the intent of TRLIA to apply these conditions to construct up to November 1 in other GGS areas covered under the subject Biological Opinion, specifically including the WPIC, WPIC borrow ditch, Algodon Canal, Clark Slough, and Clark Lateral. This request does not include the main stem of the Bear River, which is not considered to provide suitable GGS habitat. In addition to the conditions specified in the subject Biological Opinion, TRLIA will provide daily inspections in all areas prior to any construction work and will send inspection reports to USFWS and CDFG on a daily basis. TRLIA will implement seclusion and other protective measures for work in GGS habitat (including dewatering of aquatic areas as necessary to complete the work) 15 days prior to October 1.

### **Vernal Pool Crustaceans**

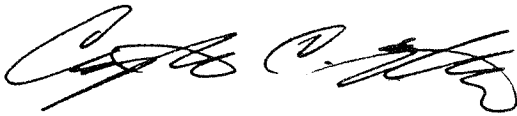
To mitigate for impacts to VPC, the USFWS in the subject Biological Opinion has required the purchase of the equivalent of 27.42 preservation acres and 9.14 creation acres of vernal pool habitat. TRLIA is committed to purchasing the 9.65 credits for preservation available from Wildlands, Inc., at Reeds Creek, documented with a Purchase Agreement approved by the TRLIA Board on September 6, 2005 (to be provided to your agency upon final execution). TRLIA is committed to purchasing the balance of the 17.77 preservation acres and 9.14 creation

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acres, documented with a Letter of Intent approved by the TRLIA Board on September 6, 2005 (to be provided to your agency upon final execution). The Letter of Intent specifies the mitigation site to be determined in Yuba or Sutter County, targeted at Palermo but other sites will be considered. To support the Letter of Intent, TRLIA will establish a Letter of Credit or Escrow Account as financial assurance for the mitigation. In the event that the Letter of Intent cannot be fulfilled by Wildlands, Inc., TRLIA will purchase acreage at existing alternative sites acceptable to USFWS (such as Dove Ridge) within 18 months of the issuance date of the subject Biological Opinion. The amount of the Letter of Credit or Escrow Account will be \$135,000 per acre (the current value set by the species fund) for a total of \$3,632,850. It is understood that TRLIA will be able to draw upon the Letter of Credit or Escrow Account to fulfill the mitigation. If the actual cost of land and long-term management is determined to exceed the amount in the Letter of Credit or Escrow Account, TRLIA agrees to pay the difference in order to ensure that the mitigation requirement is fully implemented. TRLIA will coordinate with USFWS to establish the appropriate financial assurance instrument.

We would appreciate your response as soon as possible, and request courtesy copies to CDFG. Please let me know if you have any questions or comments.

Sincerely,



Christopher C. Elliott  
Project Manager

cc: Banky Curtis – CDFG  
Ian Drury – CDFG  
John Nelson – CDFG  
Kent McClain – TRLIA