



- CITY OF BIGGS -
PLANNING DEPARTMENT ACTIVITY REPORT
August/September 2016

465 C Street /
P.O. Box 1134
Biggs, CA 95917

PHONE: (530) 868-5493
FAX: (530) 868-5239

DATE: September 13, 2016
TO: Honorable Mayor and Members of the City Council
FROM: Scott Friend, AICP - City Planner
SUBJECT: Planning Department Monthly Activity Report – August/September 2016

DEPARTMENT ACTIVITY SUMMARY

Contract Staff Days/ Agency Meetings / Code Enforcement Activity:

- Code Enforcement Weekly Hours (avg. of 7-8hrs./wk.; Tues & Wed. from 10am-2pm)
- Planning Contract Staffing Hours (avg. of 5-7hrs./wk.)
- City Council Meeting: September 13, 2016
- Code Enforcement Nuisance Abatement Hearings: *None scheduled*
- Housing Related Grant Program Ad Hoc Cmte. Meeting #2: September 13th at 5:30pm

Major Project Activity and Work Effort Update:

1. *Wastewater Treatment Plant Land Application Project (Environmental Compliance):*

USFWS Section 7 Consultation (environmental):

On August 12th, the City receive a copy of the Section 7 consultation conclusion letter from the USFWS. The receipt of this letter concludes the consultation process and allows the City to now seek final environmental review clearance from the RWQCB and continue the processing of the project. The key points / results of the USFWS Section 7 consultation process are as follows:

- 1) The service has not required any modifications to the project as presented as a result of the consultation process;
- 2) The service has authorized the "take" of one Giant Garter Snake as part of the project construction process;
- 3) The City has been committed to various pre-construction; during-construction; and post-construction activities related to the placement of exclusion fencing; post-construction rehabilitation activities; rodent control practices; weed control practices; and, pond maintenance actions; and
- 4) The 'standard' construction window for work within areas potentially harboring giant garter snakes has been applied (May 1 – Oct. 1).

Staff's opinion of the result of the consultation is favorable. Planning staff have been in contact with engineering staff to ensure that they are aware of the results of the consultation process and have recommended that the project EIR, Mitigation Monitoring

Plan, and Section 7 consultation actions be included in the project bid package for potential bidders. A copy of the Section 7 consultation letter has been attached with this report.

Both engineering and planning staff are continuing to work with and press Regional Board staff to finalize the State's environmental review for the project. That approval is expected to occur in the next 3-5 weeks.

2. *Downtown Code Enforcement / Hazardous Building Abatement:*

During the reporting period, the following actions have occurred in the downtown Biggs area as a result of the City's Code Enforcement actions:

- Removal of hazardous mechanical equipment from rear awning of the building owned by Mr. Kelly Purvis.
- Removal / demolition of walls and facade elements of the "roof-less" building adjacent to the Pheasant Club and the building owned by Mr. Honan.

As a result of this action, staff will now work with Mr. Honan to address issues remaining on that property (corner of B Street and 7th Street)

The following active code enforcement cases of note are, or were, in process at the time of the preparation of this report:

- *Marijuana-related:* No current marijuana-related actions are known to the City or active.
- *Dhami (various locations):* Staff is working with the Butte County Building Department to ensure that all required and necessary permits have been secured for improvement work being done by Mr. Dhami at various in town. The Butte County Building Department has issued 'red-tag' notices at two (2) construction locations for work being done without proper permits. Staff is also working with Butte County to verify Mr. Dhami's status as an "owner-builder" on his properties in Biggs.
- *Adkins (535 F Street):* A stop-work order and construction red-tag notice was placed on construction occurring at 535 F. Street due to the unpermitted construction of a home addition occurring at the site. The un-approved and un-permitted construction was observed in the rear-yard of the property and is in violation of rear-yard setback requirements of the City Code. The owner has been notified of her options in this regard and staff is monitoring the site to ensure that no further construction occurs. The property owner was given until Friday, September 16th to identify and pursue options. If nothing happens by the 16th, staff will start a code violation proceeding at the site seeking removal of the halted-construction.
- *Davis - Diamond Match Bldg. (2997 Eighth Street):* The Code Enforcement officer is continuing to make attempts to contact the Building owner (Davis) about this matter. If no action is taken by the property owner in the next 10-days, a formal code violation case will be started on the property.
- *Marquez (365 B Street):* Staff is looking into work occurring at the site without proper building permits. Staff has contacted the Butte County Building Department and contact is being made with the property owner in this regard.

3. *Land Use / Development Activity:*

- *Adkins (535 F Street):* Lauffin Pools, acting on behalf of the property owner Ms. Cami Adkins, has submitted a site plan application for the construction of a new in-ground pool on the west side of the parcel. The approval letter for the pool was mailed on Tuesday, September 6th.
- *(NorCal Investors, Inc.) 3121 and 3123 4th Street:* red-tag, stop-work order notices were posted at both locations as work is being done without proper permits. City staff is working with the Butte County Building Department on the issue.
- The City of Biggs Planning Department issued a fence permit approval at 2992 10th Street (Acevedo) for a masonry fence in a front-yard that has since been constructed. The applicant constructed the fence in a location that was not permitted (inside the public right-of-way). As such, staff is working to get a signed acknowledgement from the homeowner documenting the situation in the event that a future project would need to remove the fence due to its location.

4. *Zoning Code Update:*

Staff provided a separate staff report at the August City Council meeting on this topic and at that time requested the Council to review the zoning use matrix table proposed as part of the effort. Staffing will be seeking input on the Council on this matter and anticipates that scheduling a separate meeting on this matter later in the month of September.

Monthly Department Activity Report:

1. *Major Land Development/Entitlement Applications: None.*

2. *Planning Services Activities:*

- Applications:
 - Fence permits: None
Note: A fence permit was approved at 2992 10th Street (see additional comments at the top of this page)
 - Site Plan Reviews: One (1): Pool at 535 F Street (Adkins)
 - Other: *None*

3. *Public Contact (non-Code Enforcement/non-application) / Information Requests/ Activity:*

- Multiple: Various topics to include setbacks, "what's-happening", and downtown actions. Staff was contacted by a party owning a home in Biggs about the use of the parcel as a small family care home (less than 6 persons). The property owner was informed that pursuant to California Public Health and Safety Code requirements, small family care homes having less than six (6) persons are allowed by-right in all residential dwellings and zone districts. The person indicated a desire to have three (3) persons at the residence.

4. *General Information / Public Contact for Planning-Involved Code Enforcement Activity:*

- Please refer to Code Enforcement Monthly Activity report for specific Code Enforcement activity details.
- August / September Code Enforcement targeted items:
 - Marijuana.
 - Abandoned and Inoperable Vehicles.
 - Un-permitted construction activities.

5. *Butte County Building Permit Issuance:*

- *Please refer to the attached reports from the Butte County Building Division.*

Miscellaneous / Information:

1. Housing Related Parks Program Grant (HRPG) Project Committee:
The first meeting of the HRPG project committee is scheduled for Tuesday, September 13th at 5:30pm.

Attachments (x3):

- Code Enforcement Activity Report – August 2016
- Building Permit Issuance / Application Reports – Butte County: August 2016
- USFWS Section 7 Consultation Letter



-CITY OF BIGGS -
PLANNING DEPARTMENT ACTIVITY REPORT
CODE ENFORCEMENT
August/September

465 C Street
P.O. Box 307
Biggs, CA 95917

PHONE: (530) 868-5447
FAX: (530) 868-5239

DATE: September 6, 2016
TO: Honorable Mayor and Members of the City Council
FROM: Nicole Fillmore-Deniz - Code Enforcement Officer
SUBJECT: Planning Department Monthly Activity Report –August 2016

DEPARTMENT ACTIVITY SUMMARY:

Downtown Code Enforcement / Hazardous Building Abatement:

During the reporting period, the following actions have occurred in the downtown Biggs area as a result of the City's Code Enforcement actions:

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- *Adkins (535 F Street)*: A stop-work order and construction red-tag notice was placed on construction occurring at 535 F. Street due to the unpermitted construction of a home addition occurring at the site. The un-approved and un-permitted construction was observed in the rear-yard of the property and is in violation of rear-yard setback requirements of the City Code. The owner has been notified of her options in this regard and staff is monitoring the site to ensure that no further construction occurs. The property owner was given until Friday, September 16th to identify and pursue options. If nothing happens by the 16th, staff will start a code violation proceeding at the site seeking removal of the halted-construction.

• *Davis - Diamond Match Bldg. (2997 Eighth Street)*: Code Enforcement is continuing to make attempts to contact the Building owner (Davis) about this matter. If no action is taken by the property owner in the next 10-days, a second formal code enforcement letter will be sent to the property owner.

• *Marquez (365 B Street)*: Staff is looking into work occurring at the site without proper building permits. Staff has contacted the Butte County Building Department and contact is being made with the property owner in this regard.

Throughout the month of August, letters were sent out accordingly to the following violations:

Unlawful outdoor storage:	487-A & B D Street 380 C Street 381 C Street 516 C Street 2894 Sixth Street 360 Aleut Street 480 Aleut Street 2995 Tenth Street 3088 Tenth Street 3044 Fourth Street 485 D Street
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Permits Applied - Summary by Type

Butte County

Date Range Between 8/1/2016 and 8/31/2016

PERMIT TYPE	NUMBER OF PERMITS ISSUED	VALUATION	FEE CHARGED
MISCELLANEOUS	2	\$3,000.00	\$256.00
RE-ROOF RESIDENTIAL	2	\$3,000.00	\$256.00
Totals:	2	\$3,000.00	\$256.00



Permits Issued - Summary by Type

Butte County

Date Range Between 8/1/2016 and 8/31/2016

PERMIT TYPE	NUMBER OF PERMITS ISSUED	VALUATION	FEE CHARGED
MISCELLANEOUS	2	\$3,000.00	\$256.00
RE-ROOF RESIDENTIAL	2	\$3,000.00	\$256.00
Totals:	2	\$3,000.00	\$256.00



United States Department of the Interior



In Reply Refer to:
08ESMF00-
2015-F-0111-1

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Suite W-2605
Sacramento, California 95825-1846

AUG 12 2016

Douglas E. Eberhardt
Manager, Region IX
Infrastructure Section
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105-3901

Subject: Formal Consultation on the Proposed City of Biggs Wastewater Treatment Plant
Upgrades Phase Two Project, Butte County, California

Dear Mr. Eberhardt:

This letter is in response to the U.S. Environmental Protection Agency's (EPA) May 26, 2016, request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed City of Biggs Wastewater Treatment Plant (WWTP) Upgrades Phase Two Project (proposed project) in Butte County, California. Your request was received by the Service on May 31, 2016. At issue are the proposed project's effects on the federally-listed as threatened giant garter snake (*Thamnophis gigas*) (snake). This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The federal action which we are consulting on is the construction of two water storage basins and appurtenant facilities at the WWTP located in the city of Biggs (applicant). The proposed project is receiving funding through the Clean Water State Revolving Fund (CWSRF). The EPA has delegated the administration of the CWSRF program to states under the federal Clean Water Act to assist in funding projects intended to improve water quality. The Division of Financial Assistance of the State Water Resources Control Board (SWRCB) administers the CWSRF program in California pursuant to 40 CFR Part 35. Issuance of CWSRF financing for a project by the SWRCB is considered equivalent to a federal action.

Pursuant to 50 CFR 402.12(j), you submitted a biological assessment for our review and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, and is likely to adversely affect the snake. The proposed project is not within designated or proposed critical habitat for any federally-listed species.

In considering your request, we based our evaluation on the following: (1) your May 26, 2016, letter requesting initiation of formal consultation and the enclosed revised August 2015 *Wastewater Treatment Plant Enhancement Project Biological Assessment* (biological assessment) prepared by Pacific Municipal Consultants (consultant); (2) the July 10, 2013, site visit attended by representatives of the

Service, the applicant, and the consultant; (3) email and telephone correspondence between the Service, the applicant, and the EPA; and (4) other information available to the Service.

The remainder of this document provides our biological opinion on the effects of the proposed project on the snake.

Consultation History

- July 10, 2013: Representatives of the Service, the applicant, and the consultant attended a pre-application meeting and site visit to discuss the proposed project design and effects to the snake.
- January 5, 2015: The Service received the December 30, 2014, letter from the U.S. Department of Agriculture, Rural Development (USDA-RD), requesting initiation of informal consultation with the December 2013 biological assessment enclosed.
- February 23, 2015: Representatives of the Service, the USDA-RD, the applicant, and the consultant participated in a conference call to discuss the project design. The applicant informed the Service that the project design had changed. The Service requested a new biological assessment for the proposed project.
- August 13, 2015: The Service received an email from the USDA-RD stating they were terminating their designation as lead agency. The proposed project is no longer receiving funding from the USDA-RD and funding will be provided by the CWSRF.
- May 31, 2016: The Service received the May 26, 2016, letter from the EPA requesting initiation of formal consultation with the revised August 2015 biological assessment enclosed.

BIOLOGICAL OPINION

Description of the Action

The proposed project is located one-half mile southeast of the urban developed area of the city of Biggs. The proposed project area is at an elevation of about 90 feet above mean sea level, located on the eastern side of the Sacramento Valley. The location is approximately between West Biggs Gridley Road to the east, Belding Lateral canal to the west, Farris Road to the south, and Hamilton Slough to the north. The proposed project area also includes the existing WWTP site north of Hamilton Slough. The purpose of the proposed project is to provide an improved WWTP effluent disposal method. This will enable the city of Biggs to apply all of the treated wastewater to land directly south of the WWTP, thereby beneficially using the effluent to grow fodder crops for off-site livestock animals and eliminating the discharge to the Lateral K bypass canal (agricultural drainage channel west of the WWTP) and the requirement for a National Pollutant Discharge Elimination System permit.

The proposed project includes the purchase of 160 acres of fallow rice field, for the installation of two seasonal water storage basins to cover 50 acres, and additional land to the south of the storage basins, for land disposal of the treated effluent. A pipeline will be constructed from the existing

WWTP to convey treated effluent to the storage basins for land application discharge. The pipeline from the WWTP will be established underneath Hamilton Slough and no disturbance of the Slough will occur. It is not anticipated that construction will last longer than 12 months. The applicant is proposing to conduct as-needed maintenance of the storage basins, which will include mowing of vegetation on the storage basin berms and rodenticide application, along with backfilling of abandoned ground squirrel burrows, to help preserve the structural integrity of the berms. In addition, removal of biosolids from the storage basins may need to occur on a 10-year cycle. Construction equipment expected to be used includes dozers, scrapers, graders, backhoes, compactors, boring equipment, water and dump trucks, and forklifts. Construction equipment will primarily access existing agricultural maintenance roads from West Biggs Gridley Road. A 2-acre construction equipment staging area will be established at the northeast corner of the site.

Conservation Measures

The applicant has proposed the following measures to minimize effects on the snake. The measures proposed below are considered part of the proposed action evaluated by the Service in this biological opinion.

- To minimize impacts on the snake, construction and ground-disturbing activities will be initiated during the active season (May 1 to October 1) and will be commenced prior to September 15. The applicant is proposing to continue work in the snake's inactive season.
- Twenty-four hours prior to the commencement of construction activities, the project area shall be surveyed for the snake by a Service-approved biologist. The biologist will provide the Service with a written report that adequately documents the monitoring efforts. The project area shall be re-inspected by the monitoring biologist whenever a lapse in construction activity of two weeks or greater has occurred.
- A Worker Environmental Awareness Training Program for construction personnel shall be conducted by a qualified biologist for all construction workers, including contractors, prior to the commencement of construction activities.
- During construction operations, stockpiling of construction materials, portable equipment, vehicles, and supplies will be restricted to the designated construction staging areas and all operations will be confined to the minimal area necessary.
- A Service-approved biologist will inspect and monitor all construction related disturbances within the project area during the snake's active period (May 1 to October 1) to attempt to minimize take of the snake or the destruction of its habitat. If snakes are encountered during construction activities, the biologist will notify the Service immediately to determine the appropriate procedures related to the collection and relocation of the snake. A report will be submitted, including date(s), location(s), habitat description, and any corrective measures taken to protect the snake, within one (1) business day. The biologist will be required to report any take of listed species to the Service immediately by telephone at (916) 414-6631 and by email or written letter addressed to the Chief, Sacramento Valley Division, within one (1) working day of the incident.
- Project-related vehicles will observe a 20-mile-per-hour speed limit within construction areas, except on existing paved roads where they shall adhere to the posted speed limits.

- Prior to start of construction, exclusionary fencing will be installed at the temporary construction zone limits to identify and protect these areas from encroachment of personnel and equipment. Fencing will be established in the uplands immediately adjacent to aquatic snake habitat and extending up to 200 feet from construction activities. These areas will be avoided by all construction personnel. The fencing shall be inspected by the contractor before the start of each work day and maintained by the contractor until completion of the project. Snake exclusionary fencing will be buried at least 6 inches below the ground to prevent snakes from attempting to burrow or move under the fence.
- Best management practices (BMPs) will be implemented to minimize the potential for erosion and sedimentation into nearby waterbodies.
- All exposed/disturbed areas and access points left barren of vegetation as a result of construction activities shall be restored using locally native grass seeds, locally native grass plugs, and/or a mix of quick-growing sterile nonnative grass with locally native grass seeds. Seeded areas shall be covered with broadcast straw and/or jute netted (monofilament erosion blankets are not permitted).
- Tightly woven erosion control matting (mesh size less than 0.25 inch) or similar material shall be used for erosion control and other purposes at the proposed project site to ensure that the snakes are not trapped or become entangled by the erosion control material. The edge of the material shall be buried in the ground to prevent snakes from crawling underneath the material. The applicant or contractor will prohibit the use of plastic, monofilament, jute, or similar erosion control netting with mesh sizes larger than 0.25 inch that could entangle snakes at the proposed project site.
- A photo documentation report showing pre- and post-project area conditions will be submitted to the Service one month after the implementation of the restoration.
- Prior to removal of biosolids from the storage basins, the pond(s) will be dewatered, and then remain dry for 15 days prior to the initiation of construction activities. If complete dewatering is not possible, the Service will be contacted to determine what additional measures may be necessary to minimize effects to the snake.

Long-term Maintenance Conservation Measures

Rodent control along the berms of the two storage basins will be conducted on an as-needed basis and will be achieved through application of zinc phosphide.

- Mowing to control vegetation on the storage basin berms shall take place from July 1 through September, and mower blades will be raised to at least 6 inches to avoid injuring snakes and to leave some grassy cover.
- Application of zinc phosphide will not occur more than twice at the same location over a 12-month period, with application typically occurring between May and mid-July when seeds are the preferred food item for rodents.
- Zinc phosphide will not be used in water, waterways, or other freshwater habitats, prior to rainfall, or in irrigated areas. Broadcast baiting shall be conducted in the mornings followed

by carcass searches to remove dead squirrels in the late afternoon and the following day to reduce the risk of primary poisoning in raptors and other scavengers.

- Once treated, the ground squirrel burrows will be backfilled with native soil to discourage re-establishment. All backfill activities will occur between May 1 and October 1. Prior to any backfilling activities, a Service-approved biologist shall scope the burrow to determine if a snake is present. If present, the biologist shall monitor the burrow to determine if/when the snake leaves the burrow and backfill once the snake has left the work area. Snakes shall be given every opportunity to leave the burrow of their own volition; however, if necessary, an individual in possession of a 10(a)(1)(A) permit for the snake will be retained to excavate the burrow and relocate the snake to a Service-approved location.

Action Area

The action area is defined in 50 CFR § 402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.” For the proposed project, the action area encompasses the entire project site, including access and staging areas. The action area also includes all areas up to 200 feet from the construction footprint in which noise from construction activities is expected to exceed ambient levels (derived from Service 2006).

Analytical Framework for the Jeopardy Determination

In accordance with policy and regulation, the jeopardy analysis in this biological opinion relies on four components: (1) the *Status of the Species*, which evaluates the species' range-wide condition, the factors responsible for that condition, and its survival and recovery needs; (2) the *Environmental Baseline*, which evaluates the condition of the snake in the action area, the factors responsible for that condition, and the relationship of the action area to the survival and recovery of the snake; (3) the *Effects of the Action*, which determines the direct and indirect impacts of the proposed federal action and the effects of any interrelated or interdependent activities on the snake; and (4) *Cumulative Effects*, which evaluates the effects of future, non-federal activities in the action area on the snake.

In accordance with policy and regulation, the jeopardy determination is made by evaluating the effects of the proposed federal action in the context of the snakes current status, taking into account any cumulative effects, to determine if implementation of the proposed action is likely to cause an appreciable reduction in the likelihood of both the survival and recovery of the species in the wild.

The jeopardy analysis in this biological opinion places an emphasis on consideration of the range-wide survival and recovery needs of the snake and the role of the action area in the survival and recovery of the snake as the context for evaluating the significance of the effects of the proposed federal action, taken together with cumulative effects, for purposes of making the jeopardy determination.

Status of the Species

For the most recent comprehensive assessment of the species' range-wide status, please refer to the *Giant Garter Snake (Thamnophis gigas) 5-year Review: Summary and Evaluation* (Service 2012). No change in the species' listing status was recommended in this 5-year review. Threats evaluated during that review and discussed in the final document have continued to act on the species since the 2012 5-year review was finalized, with loss of habitat being the most significant effect. While there have been continued losses of the snakes habitat throughout the various recovery units, including the

Butte Basin Recovery Unit where the proposed project is located, to date no project has proposed a level of effects for which the Service has issued a biological opinion of jeopardy for the species. The Service is in the process of finalizing its most current 5-year review for the species.

Environmental Baseline

The proposed project is located on the eastern side of the Sacramento Valley. Surface water within the action area flows into one of four main drainage canals that direct water into either Hamilton Slough to the east or into the Butte Sink Wildlife Management Area. A snake was detected in 2014 as noted in the California Natural Diversity Database (CNDDDB) (CNDDDB 2016). It occurred approximately 0.25 mile to the northeast, across West Biggs Gridley Road, near a bridge construction site associated with Hamilton Slough.

Agricultural drainage canals and their associated berms/levees are found adjacent to the action area. There are four main canals in the action area: 1) West of the WWTP are two parallel canals - the Belding Lateral canal and the Lateral K bypass canal; and 2) Two parallel canals are south of the WWTP - Hamilton Slough and the Fleming Lateral canal. All four canals provide suitable aquatic and upland habitat with a prey base for the snake.

In addition, during a 2015 habitat assessment by the consultant, multiple ground squirrel burrows were documented along the Belding Lateral canal. Therefore, the levees associated with Hamilton Slough and the Belding Lateral canal are considered suitable upland habitat for the snake.

The agricultural field to the west of the action area is currently planted in rice, which provides foraging habitat for the snake. Additional rice fields occur north of the action area, along Hamilton Slough and behind the WWTP. The fallow rice field, south of Hamilton Slough and east of the Belding Lateral canal is not considered suitable habitat. This field is no longer in active rice cultivation and the high groundwater table precludes the establishment of small mammal burrows which provide refugia for the snake. Due to the suitability of habitat within the action area, additional rice fields in the vicinity, and the relative proximity of a known occurrence, it is likely that snakes may be found within the action area.

Effects of the Action

No aquatic or upland habitat will be lost due to construction of the proposed project. The applicant is proposing to bore and jack the pipeline from the WWTP to the storage basins under Hamilton Slough and the Fleming Lateral drainage canal, thereby avoiding direct impacts to the existing aquatic features. In addition, the construction of the two storage basins has been designed such that the north toe of the northern berm will not impact the existing Hamilton Slough levee or the interior Fleming Lateral drainage canal, thereby avoiding direct impacts to upland and aquatic snake habitat. Due to the fact that snakes are more likely to remain in aquatic habitats located in either adjacent rice fields or one of the four agricultural canals, and will avoid active construction, the Service anticipates effects on snakes will be minimized.

The applicant is proposing to conduct as-needed maintenance of the storage basins, which will include mowing of vegetation on the storage basin berms and rodenticide application, along with backfilling of abandoned ground squirrel burrows, to help preserve the structural integrity of the berms. In addition, removal of biosolids from the storage basins may need to occur on a 10-year cycle.

Although the proposed project will not result in direct impacts to the snakes habitat during project construction, there is potential for direct impacts to the snake during maintenance activities for the storage basins. Backfilling of the ground squirrel burrows and biosolid removal may result in direct impacts to the snake should they be present in the area.

Cumulative Effects

Cumulative effects include the effects of future State, Tribal, local, or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. During this consultation, the Service did not identify any future non-federal actions that are reasonably certain to occur in the action area of the proposed project.

Conclusion

After reviewing the current status of the snake, the environmental baseline for the action area, the effects of the proposed project, and the cumulative effects, it is the Service's biological opinion that the WWTP Upgrades Phase Two Project, as proposed, is not likely to jeopardize the continued existence of the snake. The Service reached this conclusion because the project-related effects to the species, when added to the environmental baseline and analyzed in consideration of all potential cumulative effects, will not rise to the level of precluding recovery or reducing the likelihood of survival of the species based on the following: (1) the construction of the proposed project will not result in any direct impacts to the aquatic and upland snake habitats; and (2) implementation of the proposed avoidance and minimization measures will ensure that construction activities minimize potential direct effect to the snake to the greatest extent feasible.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harass is defined by FWS regulations at 50 CFR 17.3 as an intentional or negligent

act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined by the same regulations as an act which actually kills or injures wildlife. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by the EPA so that they become binding conditions of any grant or permit issued to the applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The EPA has a continuing duty to regulate the activity covered by this incidental take statement. If the EPA (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of the

incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the EPA must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

Amount or Extent of Take

The Service anticipates that incidental take of the snake will be difficult to detect for the following reason(s): the number of individuals in the action area is unknown, and estimates of population density in the action area are unavailable. The snake is secretive and uses underground burrows for shelter while not in aquatic habitat during the active season and for brumation during the inactive season. There is a risk of harm, harassment, injury or mortality as a result of the proposed construction activities, and the ongoing maintenance efforts; therefore, the Service anticipates take incidental to the proposed action as; (1) the harm, harassment, injury or mortality of one (1) adult or juvenile snake.

Upon implementation of the following reasonable and prudent measures, incidental take of the snake associated with the WWTP Upgrades Phase Two Project will become exempt from the prohibitions described in section 9 of the Act. No other forms of take are exempted under this opinion.

Effect of the Take

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

Reasonable and Prudent Measures

All necessary and appropriate measures to avoid or minimize effects on the snake resulting from implementation of this project have been incorporated into the project's proposed conservation measures. Therefore, the Service believes the following reasonable and prudent measure is necessary and appropriate to minimize incidental take of the snake:

1. All conservation measures, as described in the biological assessment and restated here in the Project Description section of this biological opinion, shall be fully implemented and adhered to. Further, this reasonable and prudent measure shall be supplemented by the terms and conditions below.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the EPA must ensure compliance with the following terms and conditions, which implement the reasonable and prudent measure described above. These terms and conditions are nondiscretionary.

1. The EPA shall include full implementation and adherence to the conservation measures as a condition of any permit or contract issued for the project.
2. The EPA shall require that all personnel associated with this project are made aware of the conservation measures and the responsibility to implement them fully.

Monitoring:

In order to monitor whether the amount or extent of incidental take anticipated from implementation of the project is approached or exceeded, the EPA shall adhere to the following reporting requirements. Should this anticipated amount or extent of incidental take be exceeded, the EPA must immediately reinitiate formal consultation as per 50 CFR 402.16.

- a. For those components of the action that will result in habitat degradation or modification whereby incidental take in the form of harm is anticipated, the EPA will provide weekly (or some other appropriate timeframe) updates to the Service with a precise accounting of the total acreage of habitat impacted. Updates shall also include any information about changes in project implementation that result in habitat disturbance not described in the Project Description and not analyzed in this Biological Opinion.
- b. For those components of the action that may result in direct encounters between the snake, project workers, and their equipment whereby incidental take in the form of harassment, harm, injury, or mortality is anticipated, the EPA shall immediately contact the Service's Sacramento Fish and Wildlife Office at (916) 414-6631 to report the encounter. If encounter occurs after normal working hours, the EPA shall contact the Service at the earliest possible opportunity the next working day. When injured or killed individuals of the listed species are found, the EPA shall follow the steps outlined in the Salvage and Disposition of Individuals section below.
- c. For those components of the action that will require the capture and relocation of any listed species, the EPA shall immediately contact the Service at (916) 414-6631 to report the action. If capture and relocation need to occur after normal working hours, the EPA shall contact the Service at the earliest possible opportunity the next working day.

Salvage and Disposition of Individuals

In the case of an injured and/or dead snake, the Service shall be notified of events within one (1) day and only a Service-approved biologist shall handle the snake. In the case of a dead snake, the individual snake shall be preserved and held in a secure location until instructions are received from the Service regarding the disposition of the specimen or until the Service takes custody of the specimen. The EPA must report to the Service within one (1) calendar day any information about take or suspected take of federally-listed species not exempted in this opinion. Notification must include the date, time, and location of the incident or of the finding or a dead or injured animal. The Service contacts are Chief, Sacramento Valley Division of the Endangered Species Program, at (916) 414-6631 and Rebecca Roca, the Resident Agent-in-Charge of the Service's Law Enforcement Division at (916) 414-6660.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The Service recommends the following actions:

1. The EPA should work with the Service to assist us in meeting the goals of the forthcoming recovery plan for the snake.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION—CLOSING STATEMENT

This concludes formal consultation on the WWTP Upgrades Phase Two Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service where discretionary federal agency involvement or control over the action has been retained or is authorized by law and:

- (a) If the amount or extent of taking specified in the incidental take statement is exceeded;
- (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or
- (d) If a new species is listed or critical habitat designated that may be affected by the identified action.

If you have any questions regarding this biological opinion, please contact Adam Stewart (adam_stewart@fws.gov) or Kellie Berry (kellie_berry@fws.gov), at the letterhead address or at (916) 414-6631.

Sincerely,



Jennifer M. Norris
Field Supervisor

cc:

Mr. Mark Sorenson, City of Biggs, Biggs, CA

Ms. Shaundra Cashdollar, California Department of Fish and Wildlife, Rancho Cordova, CA

LITERATURE CITED

- California Natural Diversity Database (CNDDDB). 2016. Biogeographic Data Branch, Department of Fish and Wildlife. Sacramento, California. Accessed July 21, 2016.
- U.S. Fish and Wildlife Service (Service). 2006. Estimating the Effects of Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California. Arcata Fish and Wildlife Office, Arcata, California. July 26, 2006. 61 pp.
- . 2012. Giant Garter Snake (*Thamnophis gigas*) 5-year Review: Summary and Evaluation. Sacramento Fish and Wildlife Office, Sacramento, California. June 2012. 62 pp.