



DEPARTMENT OF THE ARMY
U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 J Street
Sacramento, California 95814-2922

REPLY TO
ATTENTION OF

Operations and Readiness Branch

FEB 26 2013

Mr. Rodney R. McInnis
Regional Administrator
National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802

Dear Mr. McInnis:

This letter is to request reinitiation of formal consultation under Section 7 of the Endangered Species Act (ESA) (16 U.S.C. § 1536) for ongoing activities at Englebright and Daguerre Point Dams, and for operation of the fish ladders at Daguerre Point Dam. Our agencies have been discussing this possibility since the receipt by the U.S. Army Corps of Engineers (Corps) of the National Marine Fisheries Service (NMFS) February 29, 2012 Biological Opinion (2012 BiOp). This reinitiated consultation is to assess impacts of Corps activities on spring-run Chinook salmon, Central Valley steelhead, and green sturgeon, which are listed as threatened under the ESA, and their associated critical habitats.

Reinitiation of formal consultation is appropriate when "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," as well as when "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." 50 CFR § 402.16(b)-(c). As noted in the Corps letter to you dated July 3, 2012, we have serious concerns regarding the 2012 BiOp and its Reasonable and Prudent Alternative (RPA). Reinitiation of consultation is appropriate here in order for the Corps to provide NMFS with additional information and clarification on subjects that include the following:

1. The scope of the Corps' authorities and discretion, for purposes both of appropriately defining the proposed action and ensuring that any RPA measures are "within the scope of the [Corps'] legal authority and jurisdiction." See 50 C.F.R. § 402.02.
2. The scope of the action area and the determination of which other activities are interrelated and interdependent with the proposed action.
3. Additional information regarding the nature of the Corps' proposed activities at Englebright and Daguerre Point Dams.
4. Scientific and technical information regarding the listed species and the effects of the proposed action on them.

The Corps' staff will work with NMFS staff to develop a schedule for submission of a revised Biological Assessment, initiation of the new consultation, and issuance of a new BiOp as soon as possible within the statutory and regulatory timeframes. We would like to have that schedule in place within two weeks of the date of this letter.

During the pendency of this reinitiated consultation, the Corps will continue to implement actions that will benefit the ESA-listed fish species, if those actions are within the Corps' authority, with near term

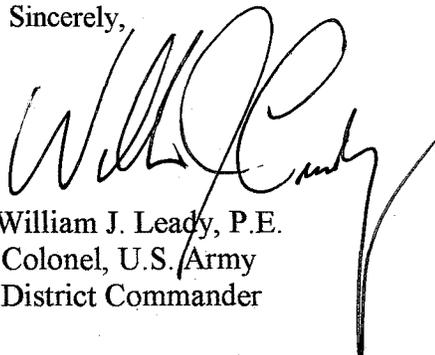
completion dates. The Corps believes that these actions effectively implement the RPA in the near term (i.e., during the pendency of the consultation) to the maximum extent practicable, and comply with the 2012 BiOp's incidental take statement (ITS). Specifically, to ensure effects to listed species are minimized, and to avoid the likelihood that the existence of listed species will be jeopardized and to avoid the adverse modification or destruction of designated critical habitat during the reinitiated consultation, the Corps plans to continue and/or implement the following measures:

1. Continue the existing gravel placement and monitoring program as described in RPA action items GAP 1 and GAP 5 – 8 (2012 BiOp pages 233 – 234).
2. Continue salmonid redd surveys as described in RPA action items GAP 5 and 6 (2012 BiOp page 234).
3. Implement and monitor the large woody material (LWM) program as described in reasonable and prudent measure (RPM) #3 (2012 BiOp pages 260 – 261 and 264 – 265).
4. Continue inspections and maintenance of Daguerre Point Dam fish ladders as described in RPA action item NTFP 5 and RPM #2 (2012 BiOp pages 229, 260, and 262 – 264).
5. Continue the sediment management program at Daguerre Point Dam as described in RPA action item NTFP 5 and RPM #2 (2012 BiOp pages 229, 260, and 262 – 264).
6. Continue the flashboard program at Daguerre Point Dam as described in RPA action item NTFP 5 and RPM #2 (2012 BiOp pages 229, 260, and 262 – 264).

In accordance with Section 7(d) of the ESA and 50 CFR §402.09, during the time-period of the renewed consultation, the Corps will not make any irreversible or irretrievable commitment of resources that would foreclose formulation or implementation of any reasonable and prudent alternative. Indeed, due to the nature of these projects, which are fixed dams with no capability of controlling river flow, the Corps takes no routine action beyond such actions as maintenance of the Daguerre fish ladder and inspecting the dams periodically for signs of deterioration. Thus, the Corps will continue normal project operations and maintenance as described in the Corps' January 2012 Biological Assessment. It is the Corps' belief that the limited actions that the Corps has taken, is taking, and will take with respect to the Englebright and Daguerre Point dams do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

If you have any questions or need additional information, please contact Mr. Doug Grothe, Park Manager at Englebright Lake, at (530) 432-6427, or via e-mail at Doug.Grothe@usace.army.mil. Thank you for your attention to this matter.

Sincerely,



William J. Leady, P.E.
Colonel, U.S. Army
District Commander