



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

October 9, 1998

Sandro Amaglio, Regional Environmental Officer
Region Nine
Federal Emergency Management Agency
Presidio of San Francisco, Building 105
San Francisco, California 94129

Subject: Biological Opinion for Hacienda -Carmel Flood Control Project, FEMA-1044-DR-CA HMGP #1044-182-0018 (1-8-98-F-70)

Dear Mr. Amaglio:

This biological opinion responds to the request by the Federal Emergency Management Agency (FEMA) to initiate formal consultation with the U.S. Fish Wildlife Service (Service) pursuant to section 7 of the Endangered Species Act of 1973, as amended (Act). At issue are the effects that the Hacienda-Carmel Flood Control project may have on the California red-legged frog.

Date of Letter Requesting Formal Consultation: August 24, 1998

Date Request Letter was Received by the Service: August 27, 1998

Species Addressed in Biological Opinion: Federally threatened California red-legged frog (*Rana aurora draytonii*).

Project Location: Along the Carmel River near the Hacienda Carmel Retirement Community in Monterey County, California.

Consultation History: This formal consultation has been prepared in accordance with the provisions and intent of the Memorandum of Understanding (MOU) between the Service and the FEMA regarding interagency cooperation under section 7 of the Act. The MOU, which was signed in July and August 1998, establishes a framework to consolidate and streamline the process for FEMA to comply with section 7 of the Act with regard to public assistance and hazard mitigation from natural disasters in California. The Service and FEMA agreed to assign actions included under the MOU to one of three tiers: tier 1 actions would be concluded in 20 days or less and must result in a determination of "not likely to adversely affect" the listed

species; tier 2 actions would be concluded in 30 days or less and would result in the issuance of a biological opinion with an incidental take statement, provided that the proposed action is not likely to jeopardize the continued existence of a listed species or result in adverse modification to its critical habitat; and tier 3 actions would be evaluated in biological opinions issued in 135 days or less and would include those actions which could have more long-term or greater detrimental effect on the listed species.

Project Description: FEMA proposes to provide funding to the Monterey County Water Resources Agency to complete a flood control project along the Carmel River to the south of the Hacienda Carmel Retirement Community. The project consists of constructing a bypass channel on the Carmel River, improving existing levees, and creating an emergency evacuation utility bridge. The project description and mitigation measures contained in the biological assessment for the project (Woodward-Clyde 1998) are incorporated into this biological opinion by reference. FEMA has determined that this project is a tier 2 level project in accordance with the MOU.

Concurrence with Tier 2 Determination: We have reviewed FEMA's determination that the proposed project is a tier 2 level project in accordance with the MOU. We concur with this determination because the activities in California red-legged frog habitat would occur between August 1 and November 1. Furthermore, if breeding pools are found within the construction area during pre-construction surveys, construction activities would be delayed until California red-legged frog larvae have completed metamorphosis.

Potential Effects:

- habitat disturbance: more than 2.8 acres of riparian habitat would be removed or thinned
- habitat loss: removal of trees and shrubs on the river bank
- direct injury and mortality to individuals of the listed/proposed species during implementation
- downstream sedimentation
- attraction of predators
- fuel or other spills of hazardous wastes
- harassment or collection by workers
- other [provide brief summary of additional potential effects]

Conclusion: The proposed action is not likely to jeopardize the continued existence of the California red-legged frog. Critical habitat for the California red-legged frog has not been designated. Therefore, the proposed action is not likely to adversely modify critical habitat.

Incidental Take Statement: Section 9 of the Act prohibits any taking (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of listed species without special exemption. Harm is further defined to include significant habitat modification or degradation that results in the death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering

(50 CFR 17.3). Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not the purpose of the agency action is not considered taking within the bounds of the Act, provided that such taking is in compliance with an incidental take statement. The stipulations in this biological opinion for the California red-legged frog, described as reasonable and prudent measures and terms and conditions, are nondiscretionary, and must be undertaken by FEMA.

The reasonable and prudent measures described below are nondiscretionary, and must be undertaken by FEMA so that they become binding conditions of any grant or permit issued to the project proponent, as appropriate, for the exemption in section 7(o)(2) to apply. FEMA has a continuing duty to regulate the activity covered by this incidental take statement. If FEMA (1) fails to require the project proponent to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

Incidental take of the California red-legged frog is expected to be low based on the protective measures FEMA has proposed to implement. The Service anticipates the following forms of incidental take may occur as a result of actions that are evaluated in this biological opinion:

1. Two (2) California red-legged frogs in the form of direct mortality or injury resulting from flood control activities.
2. All California red-legged frogs within the defined work area of the flood control project in the form of harassment from capture and transport of individuals from harm's way.

This biological and conference opinion does not authorize any form of take that is not incidental to the completion of the proposed flood control project.

Reasonable and Prudent Measures: The following reasonable and prudent measure is necessary and appropriate to minimize the impact of take on the California red-legged frog:

Adverse effects to California red-legged frogs and their habitat shall be avoided to the extent possible.

Terms and Conditions: To be exempt from the prohibitions of section 9 of the Act, FEMA shall ensure that the following terms and conditions, which implement the reasonable and prudent measures described above, are implemented:

1. The measures contained in FEMA's biological assessment (Woodward-Clyde 1998) are hereby incorporated as terms and conditions of this biological opinion and shall be fully implemented by FEMA.

2. At least 15 days prior to the onset of activities, the project proponent shall submit the name(s) and credentials of biologists who would conduct activities specified in the following measures. No project activities shall begin until proponents have received approval from the Service that the biologist(s) are qualified to conduct the work.
3. A Service-approved biologist shall survey the work site two weeks before the onset of activities. If California red-legged frogs, tadpoles, or eggs are found, the approved biologist shall contact the Service to determine if moving any of these life-stages is appropriate. In making this determination the Service shall consider if an appropriate relocation site exists. If the Service approves moving animals, the approved biologist shall be allowed sufficient time to move California red-legged frogs from the work site before work activities begin. Only Service-approved biologists shall participate in activities associated with the capture, handling, and monitoring of California red-legged frogs.
4. Before any construction activities begin on a project, a Service-approved biologist shall conduct a training session for all construction personnel. At a minimum, the training shall include a description of the California red-legged frog and its habitat, the importance of the California red-legged frog and its habitat, the general measures that are being implemented to conserve the California red-legged frog as they relate to the project, and the boundaries within which the project may be accomplished. Brochures, books and briefings may be used in the training session, provided that a qualified person is on hand to answer any questions.
5. A Service-approved biologist shall be present at the work site until such time as all removal of California red-legged frogs, instruction of workers, and habitat disturbance have been completed. After this time, the contractor or project proponent shall designate a person to monitor on-site compliance with all minimization measures. The Service-approved biologist shall ensure that this individual receives training outlined above in measure 4 and in the identification of California red-legged frogs. The monitor and the Service-approved biologist shall have the authority to halt any action that might result in impacts that exceed the levels anticipated by FEMA and the Service during review of the proposed action. If work is stopped, FEMA and the Service shall be notified immediately by the biological monitor.
6. During project activities, all trash that may attract predators shall be properly contained, removed from the work site and disposed of regularly. Following construction, all trash and construction debris shall be removed from work areas.
7. All fueling and maintenance of vehicles and other equipment and staging areas shall occur at least 20 meters from any riparian habitat or water body. FEMA and the project proponent shall ensure that contamination of habitat does not occur during such operations. Prior to the onset of work, FEMA shall ensure that the project proponent has

prepared a plan to allow a prompt and effective response to any accidental spills. All workers shall be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.

8. A Service-approved biologist shall ensure that the spread or introduction of invasive exotic plant species shall be avoided to the maximum extent possible. When practicable, invasive exotic plants in the project areas shall be removed.
9. Project sites shall be revegetated with an appropriate assemblage of native riparian wetland and upland vegetation suitable for the area. A species list and restoration and monitoring plan shall be included with the project proposal for review and approval by the Service and FEMA. Such a plan must include, but not be limited to, location of the restoration, species to be used, restoration techniques, time of year the work would be done, identifiable success criteria for completion, and remedial actions if the success criteria are not achieved.
10. Stream contours shall be returned to their original condition at the end of project activities, unless consultation with the Service has determined that it is not beneficial to the species or feasible.
11. The number of access routes, number and size of staging areas, and the total area of the activity shall be limited to the minimum necessary to achieve the project goal. Routes and boundaries shall be clearly demarcated, and these areas shall be outside of riparian and wetland areas. Where impacts occur in these staging areas and access routes, restoration shall occur as identified in measures 9 and 10 above.
12. Work activities shall be completed between April 1 and November 1. Should the project proponent demonstrate a need to conduct activities outside this period, FEMA may authorize such activities after obtaining the Service's approval.
13. To control erosion during and after project implementation, the project proponent shall implement best management practices, as identified by the appropriate Regional Water Quality Control Board district.
14. If a work site is to be temporarily dewatered by pumping, intakes shall be completely screened with wire mesh not larger than five millimeters (mm) to prevent California red-legged frogs from entering the pump system. Water shall be released or pumped downstream at an appropriate rate to maintain downstream flows during construction. Upon completion of construction activities, any barriers to flow shall be removed in a manner that would allow flow to resume with the least disturbance to the substrate.
15. A Service-approved biologist shall permanently remove from the wild any individuals of exotic species, such as bullfrogs, crayfish, and centrarchid fishes. The project proponent

shall have the responsibility to ensure that their activities are in compliance with the California Fish and Game Code.

Reporting Requirements: A completed standard reporting form for FEMA projects must be provided to the Service within 30 days after project completion. A reporting form is enclosed.

Disposition of Dead or Injured Specimens: Upon locating dead or injured California red-legged frogs, initial notification must be made by telephone and writing to the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003, (805) 644-1766, within three working days of its finding. The report shall include the date, time, location of the carcass, a photograph, cause of death, if known, and any other pertinent information.

Care shall be taken in handling injured animals to prevent additional injury. Injured animals may be released to the wild after receipt of concurrence from the Service. Care shall be taken in handling dead specimens to preserve biological material in the best possible state for later analysis.

The remains of California red-legged frogs shall be placed with the California Academy of Sciences Herpetology Department (Contact: Jens Vindum, Collections Manager, California Academy of Sciences Herpetology Department, Golden Gate Park, San Francisco, California, 94118, (415) 750-7037).

Conservation Recommendations: Section 7(a)(1) of the Act directs Federal agencies to use 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 conservation measures to promote recovery of listed species and reduce the need to list candidate species:

1. FEMA should ensure its actions do not result in the establishment of exotic vegetation, such as *Arundo*, tamarisk, or pampas grass, following completion of the proposed project.
2. FEMA should implement restoration measures for nearby off-site habitat of the California red-legged frog, such as removal of bullfrogs (*Rana catesbiana*), control of exotic vegetation, and revegetation with native species.

This concludes formal consultation on the Hacienda Flood Control Project, FEMA-1044-DR-CA HMGP #104-182-0018. Reinitiation of formal consultation is required if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency actions that may adversely affect listed species or critical habitat in a manner or to an extent not considered in this biological opinion; 3) the agency action is subsequently modified in a manner

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that causes an effect to a listed species or critical habitat that was not considered in this opinion; or 4) a new species is listed or critical habitat designed that may be affected by this action (50 CFR 402.16). Any expansion of activities beyond the scope proposed would be considered reason to reinitiate consultation.

Should you have any questions, please contact Catherine McCalvin or Amelia Orton-Palmer of my staff at (805) 644-1766.

Sincerely,



Diane K. Noda
Field Supervisor

Enclosure

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Literature Cited:

Woodward-Clyde Federal Services. 1998. Biological Assessment Hacienda Carmel Flood Control Project HMGP #1044-381-0012. Oakland, California.