



**Executive Director's Report**

*t h e*  
NATOMAS  
BASIN  
*c o n s e r v a n c y*

2150 RIVER PLAZA DRIVE  
SUITE 460  
SACRAMENTO, CA 95833  
PHONE: 916.649.3331  
FAX: 916.649.3322

February 19, 2015

Ms. Tina Bartlett, Regional Manager  
North Central Region  
California Department of Fish and Wildlife  
1701 Nimbus Road  
Rancho Cordova, CA 95670

Ms. Jennifer Norris, Field Supervisor  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Suite 2605  
Sacramento, CA 95825



RE: Request for “Revisions” to the Natomas Basin Habitat Conservation Plan: 1.) final Permit Area map for the Sutter County Permit Area, and 2.) clarification pursuant to Section VI.L.3 (p. VI-47) of the NBHCP regarding annual HCP fee adjustments.

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Dear Ms. Bartlett and Ms. Norris:

This letter requests approval of two proposed revisions to the Natomas Basin Habitat Conservation Plan (NBHCP). The first proposed revision responds to a written request by your two agencies that the County of Sutter finalize its map of the NBHCP “Permit Area.” The second requests a clarification on whether the Conservancy, acting as Plan Operator of the NBHCP, requires approval from the Wildlife Agencies to change the HCP fee in the course of its annual fee adjustment process.

As you are aware, the NBHCP, in Section VI.L.3, pages VI-47 – VI-49, provides for revisions to the NBHCP. The Conservancy is designated as the facilitator of any revision proposals, and is also designated the keeper of all records of revisions. In both cases presented here, “revisions” are proposed as they are defined in the NBHCP at Section VI.L.3 (specifically, page VI-47+).<sup>1</sup> All “Parties” to the NBHCP are aware of these proposed revisions, having had multiple opportunities to discuss them, and all are included in the circulation of this written request. In addition, the NBHCP Technical Advisory Committee is included in this circulation. The Conservancy’s Board of Directors has approved both proposed revisions contingent upon approval from the Wildlife Agencies.

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<sup>1</sup> From the NBHCP, p. VI-47: “These revisions would not result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP as approved, result in adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved.”

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BOARD OF DIRECTORS

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EXECUTIVE OFFICER

John R. Roberts  
*Executive Director*

The two proposed revisions are more thoroughly presented below:

**A. Proposing Party: County of Sutter.**

Nature of proposed revision: Sutter County proposes to formally define its 7,467 Permitted Acres within the larger area authorized in the 2003 NBHCP. In the early years of the NBHCP, Sutter County had not yet fully delineated the exact boundaries of its Permit Area. It has since completed this process, and the CDFW and USFWS have requested an official copy of the final map, as well as its inclusion into the NBHCP and Implementation Agreement (IA). The matter of map revision is anticipated in the NBHCP.<sup>2</sup> Should CDFW and USFWS approve this revision, the Conservancy will add the updated and approved map to the NBHCP and IA.

History:

Briefly stated, the chronology of the actions to date is as follows:

January 28, 2014	letter to County of Sutter from Jennifer Norris, USFWS and Tina Bartlett, CDFW requesting Sutter County finalize its Permit Area map and resolve acreage discrepancies.
February 7, 2014	Response from Sutter County's Director of Development Services, Danelle Stylos, acknowledging receipt and describing action to be taken.
March 25, 2014	Letter from County of Sutter's Director of Development Services, Danelle Stylos, to the Natomas Basin Conservancy, Plan Operator, NBHCP, with requested map of Permit Area and request for Revision.
August 6, 2014	Approval by the Board of Directors of the Conservancy.
August 20, 2014	Matter agendaized with NBHCP Implementation Group meeting and discussed. CDFW and USFWS in attendance.
October 22, 2014	Conservancy posted the notice of request and map on the homepage of its web site.
December 19, 2014	Matter agendaized with NBHCP Implementation Group meeting and discussed. CDFW and USFWS in attendance.

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<sup>2</sup> See NBHCP at Section VI.L.3.a.2: "Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the ITPs or NBHCP."



Justification:

--Will the proposed revision, if accepted, result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP? No. During the last federal litigation regarding the NBHCP, the court was assured that once Sutter County was certain as to the exact boundaries of its Permit Area, it would submit a map that clearly defined this area. Additionally, on January 28, 2014, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service requested Sutter County finalize the map and request a revision to the NBHCP. This proposed action simply complies with and fulfills that request. It also reconciles minor acreage discrepancies.

--Will the proposed revision, if accepted, result in adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved? No. This action would have no adverse impact on the environment, and merely complies with earlier commitments to formalize Sutter County's designated Permit Area.

Staff recommendations: Conservancy staff recommends approval.

**B. Proposing Party: Natomas Basin Conservancy.**

Nature of proposed revision:

In another matter, the Conservancy proposes a revision to the NBHCP based on the need for clarity as to whether or not approval from the Wildlife Agencies is required before a fee adjustment is made.

The NBHCP, at VI.L.4 (page VI-47) notes: "Revisions to the NBHCP are changes to the Plan provided for under the Operation Conservation Program, including...Mitigation Fee adjustments." The Conservancy, acting as Plan Operator of the NBHCP, does not believe that the annual HCP fee adjustment rises to the level of a "revision" as described in Section VI.L.4 and as noted above,<sup>3</sup> especially in light of other mentions in the NBHCP as follows:

--"Adjustments to the Mitigation Fee...to meet ongoing management and monitoring costs...do not require amendments to the NBHCP or Permits." (at pages VI-4 and 5).

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<sup>3</sup>This conclusion presumes that the NBHCP Finance Model is recalculated each year in accordance with the NBHCP, and the process established in the NBHCP for fee adjustments is adhered to (including discussion in publicly-notice meetings).



--“Such fee increases are provided for under the Plan’s Operating Conservation Program and therefore do not trigger amendment of the Plan or Permits.” (at page VI-6).

This item seeks to make clear that as long as the Conservancy follows the prescribed fee adjustment protocols in the NBHCP, approval by the Wildlife Agencies is not required.

A timeline of action to date on this mater follows:



August 6, 2014	Approval by the Board of Directors of the Conservancy.
August 20, 2014	Matter agendized with NBHCP Implementation Group meeting and discussed. CDFW and USFWS in attendance.
December 19, 2014	Matter agendized with NBHCP Implementation Group meeting and discussed. CDFW and USFWS in attendance.

Justification:

--Will the proposed revision, if accepted, result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP? No. HCP fee adjustment practices have been robust and fully compliant with the process established in the NBHCP since the Conservancy has been fully operational as the NBHCP’s Plan Operator.<sup>4</sup> Since its inception, the NBHCP has endured multiple state and federal court tests with the annual HCP fee calculation process clearly apparent. Moreover, each years’ fee adjustment requests have been accepted and placed into effect without problem.

--Will the proposed revision, if accepted, result in adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved? No. See answer above.

Staff recommendations: The Conservancy recommends approval of a revision to the NBHCP as follows:

At Section VI.L.3 (page VI-47), make the following wording change (~~strikethrough~~ text proposed for deletion):

Revisions to the NBHCP are changes to the Plan provided for under the Operation Conservation Program, including Adaptive Management changes and the Mitigation Fee adjustments.

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<sup>4</sup> Since the organization was first staffed in 1999.

Conclusion. The Conservancy, acting in its designated role as facilitator of revisions to the NBHCP, submits these two matters to the Wildlife Agencies as is required in the NBHCP. The Conservancy believes that the two items submitted above are, in the first instance, responsive to CDFW and USFWS requests, and in the second instance, needed to clarify a matter so that NBHCP fee-setting practices are compliant with all references in the NBHCP.

With written approval from the Wildlife Agencies, the Conservancy will insert the revisions into the NBHCP, and in the case of the Sutter County map request, also insert the requested map in the NBHCP's Implementation Agreement.

We look forward to your earliest response, and invite questions or comments that may arise on either or both of the above matters.

Sincerely,

THE NATOMAS BASIN CONSERVANCY, a California  
Non-profit Public Benefit Corporation



By: John R. Roberts  
Executive Director

Enclosures: --Communications and map in support of final map request  
--Excerpt from NBHCP Section VI.L.3


c: Kellie Berry, U.S. Fish and Wildlife Service  
Rick Kuyper, U.S. Fish and Wildlife Service  
Doug Libby, County of Sutter  
Scot Mende, City of Sacramento  
NBHCP Technical Advisory Committee  
Tanya Sheya, California Department of Fish and Wildlife  
Danelle Stylos, County of Sutter

Agreement executed by the CDFG, and sections 783.7 and 783.8 of Title 14 of the California Code of Regulations or other controlling legal authority in effect at the relevant time.

## 2. Severability

If one of the Land Use Agencies fails to obtain its Permits or has its Permits revoked for failure to comply with the NBHCP, the essential effect to the implementation of the NBHCP is that less Authorized Development is covered by the NBHCP. With regard to funding adequacy, the reduction in Authorized Development would result in a similar reduction in acres of mitigation land to be acquired, restored, managed, enhanced and administered as reserve lands in perpetuity. Therefore, TNBC would have adequate funding to continue to implement the NBHCP as it applies to the reduced Authorized Development and the Covered Activities within the participating Land Use Permittees' Permit Areas. Additionally, if TNBC were to implement the NBHCP under these circumstances, the NBHCP provides for adjustments to the Mitigation Fee as necessary, to fund the acquisition, restoration, creation, enhancement and management of reserves on a 0.5 to 1.0 mitigation basis. Economic and Planning Systems, has completed the Fee Analysis since the inception of the HCP's implementation and completed an Economic Analysis that shows the financial result on TNBC if less Authorized Development than the full 17,500 acres occurs (see Appendix A).

Additionally, should one of the Land Use Agencies not participate (see Changed Circumstances Section VI.K.2.i above), the NBHCP provides for adaptive management revisions to ensure that the mitigation program continues to be proportionate to the type of habitat and species affected.



## 3. Amendments and Revisions

There are two types of changes which may be made to the NBHCP and/or the NBHCP Permits and/or its associated documents:

Revisions  
Amendments

Any revisions or amendments shall be in accordance with all applicable legal requirements, including but not limited to the ESA, NEPA, CESA, CEQA, and any applicable state and federal regulations. TNBC shall process all amendments and revisions to the NBHCP, circulating proposed changes to all parties and, if appropriate, approving the amendment or revision by action of TNBC Board.

### a. Revisions (Changes to the NBHCP Not Requiring Amendment of the Plan and Incidental Take Permits)

Revisions to the NBHCP are changes to the Plan provided for under the Operation Conservation Program, including Adaptive Management changes and Mitigation Fee adjustments. These revisions would not result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP as approved, result in

adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved.

Revisions to the NBHCP may include, but are not limited to the following:

- (1) Updating Construction "Windows" for the NBHCP Covered Species. In the event that standard construction windows established for species covered by the NBHCP are revised by USFWS or CDFG, then such revised construction windows within the NBHCP shall be automatically revised.
- (2) Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the ITPs or NBHCP.
- (3) Establishing and amending preconstruction survey methodologies, including modifying timing of NBHCP preconstruction survey methodologies.
- (4) Modifying existing or establishing new Incidental Take Avoidance Measures.
- (5) Modifying reporting protocols for Annual Reports.
- (6) Minor changes to survey, monitoring or reporting protocols.
- (7) Revising reserve enhancement and management techniques.
- (8) Establishing new reserve design criteria.
- (9) Revising reserve enhancement or management practices in conjunction with Site Specific Management Plans.
- (10) Approving recreational or income-generating uses for the NBHCP reserves that are consistent with the biological goals and objectives of the NBHCP Plan.
- (11) Making annual adjustments to the NBHCP Mitigation Fee to keep pace with inflation, or as necessary to fully implement the NBHCP's Operating Conservation Program, including its Adaptive Management provisions and responses to Changed Circumstances.
- (12) Changes to the membership of the TAC which retains representation from the Wildlife Agencies.
- (13) Any other modifications to the NBHCP that are consistent with the biological goals and objectives the NBHCP that the USFWS and CDFG have analyzed and agreed to, and that will not result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP as approved, result in adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved or result in take not analyzed in connection with the NBHCP as



approved including but not limited to: the approval or execution of agreements to facilitate execution and implementation of the NBHCP; action by the TNBC to delegate any of its duties specified by the NBHCP to a third party under its direct control.

The party proposing a revision to the NBHCP shall circulate to TNBC and the members of the TAC, the proposed revision along with an explanation of why the revision is necessary or desirable; and a description of why the party believes the effects of the proposed revision are more beneficial than or are not significantly different from those described in the NBHCP as originally adopted. TNBC shall be responsible for circulating all proposed revisions to the other Permittees for review, as appropriate. If TNBC, and the USFWS and CDFG representatives to the TAC agree to the proposed revision, and no other Permittee objects within the period prescribed by TNBC, TNBC shall process the revisions to the NBHCP, including, if appropriate, approving the revision by action of TNBC Board. Notwithstanding the above, all adjustments to the Mitigation Fee shall also require approval by the City and County before becoming effective within their respective jurisdictions.

If the USFWS or CDFG representative to the TAC objects that the proposed revision should be processed as an amendment to the NBHCP, then TNBC may choose to submit the proposed revision to USFWS and CDFG for review. The USFWS and CDFG shall each respond in writing to a proposed revision within sixty (60) calendar days of receipt of the request provided that sufficient supporting documentation is included with the request. The responses shall either concur with the proposed revision, or require that the proposed revision be processed as an amendment to the Plan and ITPs. If either the USFWS or CDFG require the proposed revision to be processed as an amendment, the agency shall include in their written response an explanation for its determination.

If approved by USFWS and CDFG, the revision shall become effective upon TNBC's receipt of USFWS' and/or CDFG's approval.

b. Amendments to the NBHCP

Amendments to the NBHCP will require amendment of Section 10(a)(1)(B) Permits and/or the Section 2081(b) Permits, and may require amendment of the Implementation Agreement. The following summarizes the types of changes which may require a Plan Amendment and the procedures for amending each approval.

Amendments may include any of the following types of changes to the NBHCP:

- (1) Proposed revisions required to be treated as Amendments pursuant to Section VI.L.3.b above.
- (2) The listing under the ESA or the CESA of a new species within the Plan Area which is not an NBHCP Covered Species but which may be affected by NBHCP Covered Activities and for which a Permittee seeks coverage under the Plan and ITPs.



# SUTTER COUNTY

## DEVELOPMENT SERVICES DEPARTMENT

Building Inspection  
Code Enforcement  
Planning

Environmental Health  
Emergency Management  
Fire Services

Engineering  
Road Maintenance  
Water Resources

**RECEIVED**

**MAR 25 2014**

March 20, 2014

The Natomas Basin Conservancy  
Attn: John Roberts, Executive Director  
2150 River Plaza Drive, Suite 460  
Sacramento, CA 95833

Re: Request for a Revision to the Natomas Basin Habitat Conservation Plan (NBHCP)

Dear Mr. Roberts,

This letter is follow-up to recent correspondence between Sutter County and the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife that the Conservancy has been previously provided.

On January 29, 2014, Sutter County received a letter (see attachment) from the above wildlife agencies requesting additional information and clarification about Sutter County's proposed development area within its portion of the Natomas Basin. In this letter, the wildlife agencies suggested that Sutter County should pursue a revision to the NBHCP pursuant to NBHCP definitions and pages VI-47 to VI-49 of the plan to clearly define its Permit Area.

On February 7, 2014, Sutter County responded to the wildlife agencies (see attachment) agreeing that Exhibit C of the Implementing Agreement and Figure 2 of the NBHCP require updating and committed to pursue submission of the revision of these two maps within 60 days (April 7, 2014).

This letter constitutes Sutter County's request for a revision to the NBHCP pursuant to NBHCP definitions and pages VI-47 to VI-49 of the Plan.

As background, Sutter County established a 10,500-acre Industrial/Commercial (I/C) Reserve as part of its 1996 General Plan. This reserve was reduced by approximately 1,000 acres in 2003 by Sutter County Planning Project GPA#03-11 pursuant to Section 3.1.2(b) of the Implementation Agreement for the NBHCP.

In 2009, Sutter County approved the Sutter Pointe Specific Plan establishing the boundaries for Sutter County's "Permit Area" within the Natomas Basin and eliminating the remnants of the Industrial/Commercial Reserve designation lying outside Sutter Pointe's boundaries.

Based upon the approval of Sutter Pointe and review of the NBHCP and Implementation Agreement, it appears that Figures 2 and 16 of the NBHCP and Exhibit C of the Implementation Agreement require updating. Those exhibits currently depict the County's larger Industrial/Commercial Reserve area that no longer exists and does not reflect approval of the Sutter Pointe Specific Plan.

Attached, please find a map depicting Sutter County's "Permit Area", which is also the boundary of the Sutter Pointe Specific Plan together with affected Assessor's parcels. Information on this map can be used by the Conservancy to update Figures 2 and 16 of the NBHCP and Exhibit C of the Implementation Agreement as needed. When comparing the new and existing maps, one can see that Sutter County's "Permit Area" covers significantly less acreage than the previous 10,500± acre I/C Reserve.

It is our understanding that Sutter County committed to the wildlife agencies during the 2003 NBHCP development and approval process that once its "Permit Area" was established, the County would more accurately detail it in revised maps. With the approval of the Sutter Pointe Specific Plan, it is now possible to delineate the County's Permit Area and the County believes a Plan Revision is appropriate and the enclosed map accomplishes that goal.

The proposed Plan Revision will not result in operations under the NBHCP that are different since the area in question is not larger than the originally approved acreage nor does it extend outside any portion of the originally-approved acreage. Moreover, it will not result in adverse impacts on the environment or the NBHCP's covered species that are new or significantly different from those analyzed in connection with the NBHCP as approved. The Sutter Pointe Specific Plan is within the boundaries of the County's former I/C Reserve and this area was previously identified and analyzed as the County's future development area.

Please contact me with any questions you may have.

Sincerely,



Danelle Stylos  
Director of Development Services

Attachments: January 28, 2014 letter received from Wildlife Agencies  
February 7, 2014 letter of response provided by Sutter County  
Map of Sutter County's Permit Area



US Fish & Wildlife Service  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2005  
Sacramento, CA 95825-1846  
(916) 414-6666  
FAX (916) 414-6712

Department of Fish & Wildlife  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
(916) 358-2900  
FAX (916) 358-2912



Danelle Stylos  
County of Sutter  
1130 Civic Center Boulevard  
Yuba City, California 95993

JAN 28 2014

Subject: Sutter County Permit Area for the Natomas Basin Habitat Conservation Plan/Incidental Take Permit (ITP# 2081-2003-018-02)

Dear Ms. Stylos:

The California Department of Fish and Wildlife (Department) and the U.S. Fish and Wildlife Service (Service) have reviewed the *2030 General Plan* for Sutter County and the Sutter Pointe Specific Plan (Specific Plan). The purpose of our letter is to request additional information on these plans and to provide Service and Department policy relative to our permits.

Please be aware the Specific Plan identifies for development a larger area (7,500 acres) than what is permitted under the NBHCP (7,467 acres). Therefore, the Department and Service requests information on Sutter County's permitted area within the 10,500 Industrial Commercial Reserve as mapped in the Natomas Basin Habitat Conservation Plan (NBHCP). At the time the NBHCP was adopted and the associated Incidental Take Permits (ITP) issued, Sutter County had not finalized their General Plan or zoning map. The Sutter County permit area includes 7,467 acres permitted under the plan within a larger 10,500-acre Industrial Commercial Reserve (see page III-16 of the NBHCP and the enclosed map). It is our understanding that once the map was finalized the NBHCP and associated ITP's would be updated to provide clarity of the permitted acres and identify conservation goals and objectives. This update should be provided as a "revision" (NBHCP, definitions and pages VI-47 to VI-49), which does not "...result in operations under the NBHCP that are significantly different from those analyzed in connection with the NBHCP as approved, result in adverse impacts on the environment that are new or significantly different from those analyzed in connection with the NBHCP as approved".

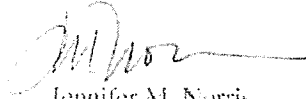
The Department and the Service request that the 33-acre difference be addressed by the County. We request that the County of Sutter provide a formal letter requesting a revision to the Sutter County Permit Area shown in Exhibit C of the Implementing Agreement and Figure 2 of the NBHCP to reflect the location of the 7,467 permitted acres. The map would be formally included in the administrative record of the NBHCP. Finally, the AutoCAD, ArcGIS or other geo-referenced format of the area should be provided for planning purposes.

Danelle Stylos

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If you have questions, please contact Angela Calderaro, Senior Environmental Scientist at (916) 358-2920 or [Angela.Calderaro@wildlife.ca.gov](mailto:Angela.Calderaro@wildlife.ca.gov) or Kellie Berry, Chief of the Sacramento Valley Division at (916) 414-6600 or [kellie\\_berry@fws.gov](mailto:kellie_berry@fws.gov).

Sincerely,



Jennifer M. Norris  
Field Supervisor  
USFWS



Jeff Drongesen  
Regional Manager  
Region 2, CDFW

Enclosure

cc:

Jeff Drongesen, CDFW, [jeff.drongesen@wildlife.ca.gov](mailto:jeff.drongesen@wildlife.ca.gov)  
Jennifer Navicky, CDFW, [jennifer.navicky@wildlife.ca.gov](mailto:jennifer.navicky@wildlife.ca.gov)  
Angela Calderaro, CDFW, [angela.calderaro@wildlife.ca.gov](mailto:angela.calderaro@wildlife.ca.gov)  
Kellie Berry, USFWS, [kellie\\_berry@fws.gov](mailto:kellie_berry@fws.gov)  
Ken Sanchez, USFWS, [kenneth\\_sanchez@fws.gov](mailto:kenneth_sanchez@fws.gov)  
Scot Mende, City of Sacramento, [SMende@cityofsacramento.org](mailto:SMende@cityofsacramento.org)  
John Roberts, Natomas Basin Conservancy, [jroberts@natomasbasin.org](mailto:jroberts@natomasbasin.org)



# SUTTER COUNTY

## DEVELOPMENT SERVICES DEPARTMENT

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Building Inspection  
Code Enforcement  
Planning

Environmental Health  
Emergency Management  
Fire Services

Engineering  
Road Maintenance  
Water Resources

February 7, 2014

Jennifer M. Norris  
Field Supervisor  
US Fish & Wildlife Service  
Sacramento Office  
2800 Cottage Way, Room W-2605  
Sacramento, CA 95825-1846

Tina Bartlett  
Region 2 Manager  
Department of Fish and Wildlife  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670

Re: **Sutter County Permit Area for the Natomas Basin Habitat Conservation Plan (NBHCP)/Incidental Take Permit (ITP#2081-2003-018-02)**

Dear Ms. Norris and Ms. Bartlett,

Sutter County thanks you for your January 28, 2014, correspondence requesting clarification about Sutter County's development within the Natomas Basin.

As background, Sutter County established a 10,500 acre Industrial/Commercial Reserve as part of its 1996 General Plan. This Reserve was reduced by approximately 1,000 acres in 2003 (Sutter County Planning Project GPA#03-11) pursuant to Section 3.1.2(b) of the Implementation Agreement for the Natomas Basin Habitat Conservation Plan.

In 2009, Sutter County approved the 7,500± acre Sutter Pointe Specific Plan establishing the boundaries for Sutter County's development area within the Natomas Basin and eliminating the remnants of the Industrial/Commercial Reserve lying outside the boundaries of Sutter Pointe.

Your correspondence identifies a discrepancy between the 7,500± acre Sutter Pointe plan and Sutter County's authorized development area of 7,467 acres. The difference in this acreage exists because there are 57± acres of existing roadways within the boundaries of Sutter Pointe comprising Sankey, Riego, and Natomas Roads and Pacific Avenue within Sutter Pointe. If one deducts this acreage from the 7,500± acres Sutter Pointe total, this establishes 7,443± acres within Sutter Pointe to be developed, and this is within Sutter's County's development threshold.

February 7, 2014

Sutter County agrees that Exhibit C of the Implementing Agreement and Figure 2 of the NBHCP require updating and Sutter County will pursue submission of a revision of these two maps with the Conservancy within the next 60-days. As part of this revision process, Sutter County will provide a GIS layer of this area for planning purposes.

Please call me if you wish to discuss this matter further.

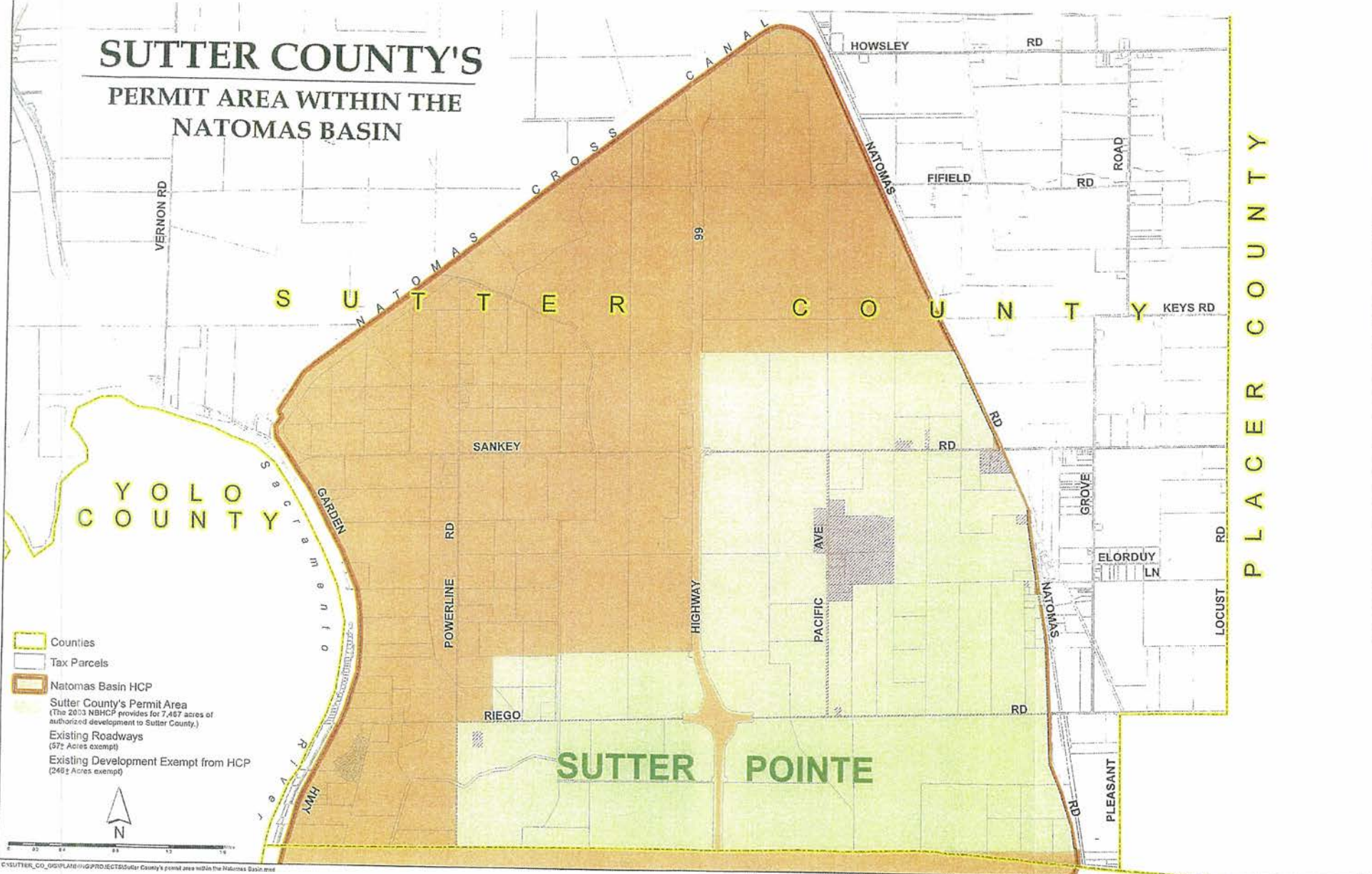
Sincerely,



Danelle Stylos  
Director of Development Services

cc: Jeff Drongesen, CDFW, [jeff.drongesen@wildlife.ca.gov](mailto:jeff.drongesen@wildlife.ca.gov)  
Jennifer Navicky, CDFW, [Jennifer.navicky@wildlife.ca.gov](mailto:Jennifer.navicky@wildlife.ca.gov)  
Angela Calderaro, CDFW, [angela.calderaro@wildlife.ca.gov](mailto:angela.calderaro@wildlife.ca.gov)  
Kellie Berry, USFWS, [kellie\\_berry@fws.gov](mailto:kellie_berry@fws.gov)  
Ken Sanchez, USFWS, [Kenneth\\_sanchez@fws.gov](mailto:Kenneth_sanchez@fws.gov)  
Scot Mende, City of Sacramento, [SMende@cityofsacramento.org](mailto:SMende@cityofsacramento.org)  
John Roberts, Natomas Basin Conservancy, [jroberts@natomasbasin.org](mailto:jroberts@natomasbasin.org)  
George Carpenter, [georgemcarpenter@comcast.net](mailto:georgemcarpenter@comcast.net)

# SUTTER COUNTY'S PERMIT AREA WITHIN THE NATOMAS BASIN



- Counties
- Tax Parcels
- Natomas Basin HCP
- Sutter County's Permit Area  
(The 2013 NBHCP provides for 7,467 acres of authorized development to Sutter County.)
- Existing Roadways  
(57± Acres exempt)
- Existing Development Exempt from HCP  
(248± Acres exempt)





If you have any questions regarding the proposed Order, please contact Dania Jimmerson at (916) 464-4742 or [Dania.Jimmerson@waterboards.ca.gov](mailto:Dania.Jimmerson@waterboards.ca.gov).

*Original Signed By*  
James D. Marshall  
Senior Engineer

Enclosures (3): Notice of Public Hearing (Discharger Only)  
Proof of Posting Form (Discharger Only)  
Tentative Cease and Desist Order (Discharger Only)

cc: David Smith, U.S. Environmental Protection Agency, Region IX, San Francisco (via email only)  
Peter Kozelka, U.S. Environmental Protection Agency, Region IX, San Francisco (via email only)  
US Army Corp of Engineers, Sacramento  
US Fish and Wildlife Service, Sacramento  
Phil Isorena, State Water Resources Control Board, Sacramento (via email only)  
Department of Water Resources, Central District, Sacramento  
State Office of Historical Preservation, Sacramento  
Regional Manager, Department of Fish & Game, Region II, Rancho Cordova  
Department of Environmental Health, Sacramento County, Sacramento  
Paul Donoho, Division of Environmental Health, Yuba County, Marysville  
Bill Jennings, California Sportfishing Protection Alliance, Stockton  
Richard McHenry, California Sportfishing Protection Alliance (via email only)  
Valentin Lopez, Chairperson, Amah Mutsun Tribal Band, Ohlone/Costanoan  
Rhonda Morningstar Pope, Chairperson, Buena Vista Rancheria of Me-Wuk Indians, Me-Wuk (Miwok)  
Lloyd Mathiesen, Chairperson, Chicken Ranch Rancheria of Me-Wuk, Me-Wuk (Miwok)  
Lavina Suehead, Chairperson, Colfax-Todds Valley Consolidated Tribe of Colfax Rancheria, Miwok  
Lynda Shoshone, President, Inter-Tribal Council of California, Inc.  
Yvonne Miller, Chairperson, Lone Band of Miwok Indians, Miwok  
Katherine Erolinda Perez, North Valley Yokuts Tribe, Ohlone/Costanoan, Yokuts, Miwok  
John W. Burch, Traditional Chairperson, Salinan Tribe of Monterey, San Luis Obispo and San Benito Counties, Salinan  
Nicholas Fonseca, Chairperson, Shingle Springs Band of Miwok Indians, Miwok  
Andrew Franklin, Chairperson, Wilton Rancheria Indian Tribe, Miwok Tribe

Please Add John Roberts / TNBC



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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CEASE AND DESIST ORDER R5-2015-XXXX

REQUIRING STERLING CAVIAR LLC.  
ELVERTA FACILITY  
SACRAMENTO COUNTY  
TO CEASE AND DESIST  
FROM DISCHARGING CONTRARY TO REQUIREMENTS PRESCRIBED  
IN ORDER R5-2007-0012 (NPDES NO. CA0085197)

The California Regional Water Quality Control Board, Central Valley Region, (hereafter Central Valley Water Board) finds that:

- On 15 March 2007 the Central Valley Water Board adopted Waste Discharge Requirements (WDR) Order R5-2007-0012 (NPDES Permit No. CA0085197), prescribing waste discharge requirements for the Sterling Caviar LLC (hereafter Discharger) at Sterling Caviar LLC, Elverta (hereafter Facility), Sacramento County. Cease and Desist Order (CDO) R5-2007-0013 was also issued to allow compliance schedules for meeting the final effluent limitations for arsenic, manganese, and nitrate, with a final compliance date of 1 March 2012.
- On 2 February 2012 the Central Valley Water Board adopted Order R5-2012-0007, amending CDO R5-2007-0013, to extend the compliance schedules for the arsenic, manganese, and nitrate an additional 3 years, until 1 March 2015.
- WDR Order R5-2007-0012 contains Final Effluent Limitations IV.A.1.a. which reads, in part, as follows:

Table 6. Effluent Limitations

Parameter	Units	Effluent Limitations				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
Arsenic	µg/L	10	--	--	--	--
Manganese	µg/L	50	--	--	--	--
Nitrate (as N)	mg/L	10	--	--	--	--

*A. Sources of Arsenic & Manganese are naturally occurring from well water used*

**Need for Time Schedule Extension and Legal Basis**

*5*

The Discharger has completed several operational changes and facility upgrades that have resulted in compliance with the final nitrate limits (Figure 1). However, these changes and upgrades have not resulted in compliance with the final effluent limits for arsenic and manganese and it was determined to not be economically feasible to treat for these trace metals. Therefore, ~~the Discharger implemented an alternative project, which is to reuse the fish hatchery wastewater for irrigation of an agricultural operation.~~

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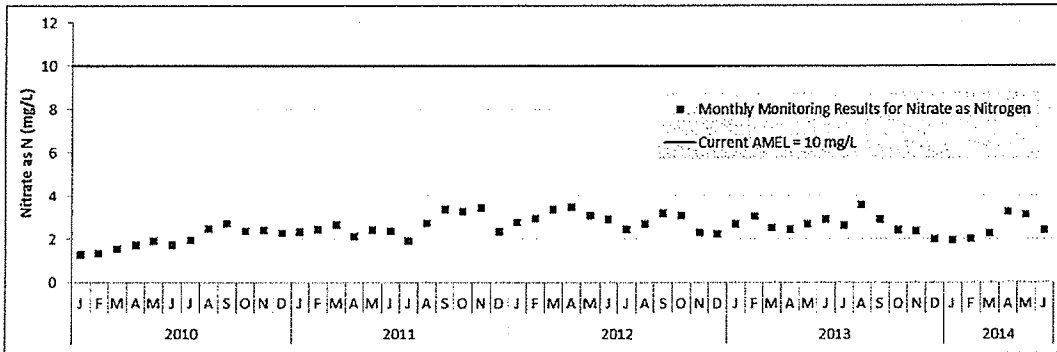


Figure 1. Monthly Monitoring Results for Nitrate as Nitrogen

6 The Discharger provided a preliminary plan to reuse the treated wastewater as irrigation supply for an agricultural crop and may cease the point source discharge to surface waters. Therefore, the NPDES Permit and CDO could potentially be rescinded. *not complete*

7 On 20 July 2011, the Discharger submitted a letter requesting an extension of the compliance schedule from 1 March 2012 until 1 March 2015 for the final effluent limitations for arsenic and manganese. The Discharger evaluated project alternatives to either change its ground water supply source for the Facility, which is the source of the arsenic and manganese, or construct facilities to remove the constituents. The Discharger conducted water quality monitoring and evaluated project alternatives and concluded that treatment for removal of arsenic and manganese at or below effluent limitations is not economically feasible. The Discharger also evaluated the option of reusing the treated wastewater for reuse on an agricultural crop. At the time, this was determined to be the cost effective project. Additional time was needed to pursue outside parties for development of an agricultural operation to be located near the Facility that would use treated effluent from the Facility as its irrigation source. Additional time was also necessary to establish contracts with an outside party, secure necessary permits, and develop the agricultural operation.

8.7 On 1 July 2013, the Discharger submitted a letter informing the Central Valley Water Board of a proposed project consisting of the construction of an onsite aquaponics agricultural operation (Aquaponics Farm) that would reuse treated effluent from the Facility for irrigation of food crops. In September 2013 the Aquaponics Farm obtained regulatory coverage under the Irrigated Lands Regulatory Program and joined the Sacramento Valley Water Quality Coalition. By December 2013 the Discharger had ceased discharging to surface water, and the entire flow from the Facility was being reused by the Aquaponics Farm as a flow-through system. However, by August 2014 the Discharger determined that the Aquaponics Farm was not an alternative project that feasibly ~~would~~ help achieve compliance by the required final date of 1 March 2015. Therefore, in August 2014 the Discharger subcontracted with an Environmental Engineering company to evaluate additional compliance alternatives.

7.8 On 29 October 2014 the Discharger submitted a Method of Compliance Work Plan (Work Plan) to comply with the final limits for arsenic and manganese. The Work Plan includes the following compliance alternatives:

- a. **Operational.** This could include: 1) a modification of the current pumping schedule and flow rates to reduce the arsenic and manganese; 2) Installation of test wells to identify less-contaminated water-bearing intervals; and 3) Active treatment to remove the arsenic and manganese prior to use or discharge.

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- b. **Regulatory.** This could include: 1) the development of site specific objectives or 2) a modification of the beneficial uses of the receiving water, point of discharge, or seasonal permit requirements.
- c. **Point-of-Use.** This includes alternatives where the use is excluded from coverage under the Clean Water Act, such as: 1) an agricultural use onsite or offsite, or 2) sale of the water to an agricultural entity.

The Discharger's next steps to achieve compliance are to submit: 1) an evaluation and ranking of alternatives described above (1 May 2015); 2) an implementation schedule and process and begin implementation for the selected project alternative(s) (1 October 2015); and 3) annual progress reports describing the steps that have been implemented and status towards achieving compliance with waste discharge requirements (1 April 2016 and 1 December 2016).

9. The Work Plan provided information supporting the infeasibility to comply with final effluent limitations for arsenic and manganese by 1 March 2015 (final limits are described in Finding 3 above). The Central Valley Water Board finds that the Discharger is demonstrating continued due diligence to comply with the final effluent limits to develop and implement a compliance alternative.

#### Mandatory Minimum Penalties

10. Water Code sections 13385(h) and (i) require the Central Valley Water Board to impose mandatory minimum penalties (MMPs) upon dischargers that violate certain effluent limitations. Water Code section 13385(j) exempts certain violations from the MMPs. Water Code section 13385(j)(3) exempts the discharge from MMPs "where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308, if all the [specified] requirements are met...for the purposes of this subdivision, the time schedule may not exceed five years in length..."

11. Per the requirements of Water Code section 13385, subdivision (j)(3), the Central Valley Water Board finds that:

- a. This Order specifies the actions that the Discharger is required to take in order to correct the violations that would otherwise be subject to Water Code sections 13385(h) and (i).
- b. To comply with final effluent limitations for arsenic and manganese the Discharger has determined that an extension of the compliance schedule in Cease and Desist Order (CDO) R5-2007-0013-01 is necessary to: (1) further investigate the feasibility of alternatives and provide an evaluation and ranking of these alternatives; (2) submit a schedule for implementation of the selected project alternative(s); and (3) submit an evaluation of the final implemented alternative demonstrating final compliance.
- c. The Discharger has demonstrated that an extension of the compliance schedule for arsenic and manganese in CDO R5-2007-0013-01 is needed to complete the tasks described above and achieve compliance.
- d. This Order establishes a time schedule to bring the waste discharge into compliance with the effluent limitations that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitations.

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The final effluent limitations for arsenic and manganese became applicable to the waste discharge on the effective date of WDR Order R5-2007-0012 (4 May 2007). CDO Order R5-2007-0013 provided protection from MMPs for violations of effluent limitations for arsenic and manganese from 4 May 2007 until 1 March 2012 and CDO Order R5-2007-0013-01 extended the protection from MMPs until 1 March 2015. The issuance of this Order R5-2015-XXXX on XX April 2015 will provide protection from MMPs for violations of effluent limitations for arsenic and manganese from XX April 2015 until 1 March 2017. The Discharger is subject to MMPs for violations of effluent limitations for arsenic and manganese from 1 March 2015 to XX April 2015.

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By statute, a CDO may provide protection from MMPs for no more than five years, except as provided in Water Code section 13385, subdivision (j)(3)(C)(ii)(II).

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Per the requirements of Water Code section 13385(j)(3)(C)(i), the time schedule shall not exceed five years. However, per the requirements of 13385(j)(3)(C)(ii)(II), following a public hearing, and upon a showing that the Discharger is making diligent progress toward bringing the waste discharge into compliance with the effluent limitation, the Central Valley Water Board may extend the time schedule for up to an additional five years, if the Discharger demonstrates that the additional time is necessary to comply with the effluent limitation. The Central Valley Water Board finds, as described in previous findings in this Order, that the Discharger is making diligent progress to bring the waste discharge into compliance with final effluent limitations for arsenic and manganese contained in WDR Order R5-2007-0012, and has demonstrated that the additional time is necessary.

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Compliance with this Order exempts the Discharger from MMPs for violations of the final effluent limitations for arsenic and manganese contained in WDR Order R5-2007-0012 from XX April 2015 to 1 March 2017.

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In accordance with Water Code section 13385, subdivision (j)(3)(C), the total length of protection from mandatory minimum penalties for the final effluent limitations for arsenic and manganese does not exceed ten years.

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Water Code section 13385(j)(3) requires the Discharger to prepare and implement a pollution prevention plan pursuant to section 13263.3 of the Water Code. Therefore, a pollution prevention plan will be necessary for arsenic and manganese to effectively reduce the effluent concentrations by source control measures.

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This Order provides a time schedule for completing the actions necessary to ensure compliance with the final effluent limitations for arsenic and manganese contained in WDR Order R5-2007-0012. Since the time schedule for completion of actions necessary to bring the waste discharge into compliance exceeds one year, this Order includes interim effluent limitations and interim requirements and dates for compliance with the final limits.

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The compliance time schedules in this Order include interim performance-based effluent limitations for arsenic and manganese. The interim effluent limitations consist of an average monthly effluent concentration derived using sample data provided by the Discharger. In developing the interim limitations, when there are less than 10 sampling data points available, the *Technical Support Document for Water Quality- Based Toxics Control* ((EPA/505/2-90-001), TSD) recommends a coefficient of variation of 0.6 be utilized as representative of wastewater effluent sampling. The TSD recognizes that a minimum of 10 data points is necessary to conduct a valid statistical analysis. The multipliers contained in Table 5-2 of the TSD are used to determine an average monthly limitation based on a long-term average objective. In this case, the long-term average objective is to maintain, at a minimum, the current plant performance level. Therefore, when there are less than ten sampling points for a constituent, interim limitations are based on

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3.11 times the maximum observed effluent concentration to obtain the average monthly interim limitation (TSD, Table 5-2).

19. The Central Valley Water Board finds that the Discharger can maintain compliance with the interim effluent limitations included in this Order. Interim effluent limitations are established when compliance with the final effluent limitations cannot be achieved by the existing Facility. Discharge of constituents in concentrations in excess of the final effluent limitations, but in compliance with the interim effluent limitations, can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis. The interim limitations, however, establish an enforceable ceiling concentration until compliance with the effluent limitation can be achieved.
20. If an interim effluent limit contained in this Order is exceeded, the Discharger is subject to MMPs for that particular exceedance as it will no longer meet the exemption in Water Code section 13385(j)(3). It is the intent of the Central Valley Water Board that a violation of an interim monthly effluent limitation subjects the Discharger to only one MMP for that monthly averaging period.

#### Other Regulatory Requirements

21. Water Code section 13301 states: *"When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to that system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing."*
22. Water Code section 13267 states in part: *"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."*
- The Discharger owns and operates the aquaculture facility named in this Order.
23. The technical and monitoring reports required by this Order are necessary to determine compliance with the WDRs and with this Order.

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24. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") pursuant to Water Code section 13389, since the adoption or modification of a NPDES permit for an existing source is statutorily exempt and this Order only serves to implement a NPDES permit. (Pacific Water Conditioning Ass'n, Inc. v. City Council of City of Riverside (1977) 73 Cal.App.3d 546, 555 556). Issuance of this Order is also exempt from CEQA pursuant to California Code of Regulations, title 14, section 15321, subdivision (a)(2).

**IT IS HEREBY ORDERED THAT:**

1. Cease and Desist Order R5-2007-0013-01 is rescinded upon the effective date of this Order, except for enforcement purposes.
2. Pursuant to California Water Code sections 13301 and 13267, the Discharger shall comply with the following time schedule to ensure compliance with the arsenic and manganese effluent limitations contained in WDR Order R5-2007-0012 as described in the above Findings:

<b>Task</b>	<b>Date Due</b>
<b>Submit Method of Compliance Workplan/Schedule</b>	<b>Complete</b>
<b>Submit Compliance Alternative Investigation/Evaluation and Selection of Preferred Compliance Alternative.</b> Submit a report that includes: 1) a compliance options investigations analysis that includes: overall feasibility, effectiveness, cost, regulatory acceptance, timing, likelihood of compliance, and ease of implementation for the alternatives listed in Finding 7 of this Order. 2) a rationale for selection of preferred compliance option(s), and 3) a discussion of cost and funding sources. The report must also describe the selected preferred compliance alternative (s) and include a preliminary milestone schedule for implementing the alternative (s) for compliance with the final effluent limits for arsenic and manganese.	<b>1 May 2015</b>
<b>Submit Pollution Prevention Plan (PPP) for arsenic and manganese pursuant to CWC section 13263.3</b>	<b>1 July 2015</b>
<b>Begin Implementation of Selected Project Alternative.</b> Submit a report that includes a schedule and detailed process for implementing the selected alternative(s).	<b>1 October 2015</b>
<b>Progress Reports.</b> Submit progress reports that shall detail what steps have been implemented towards achieving compliance with waste discharge requirements, including studies, construction progress, evaluation of measures implemented, and recommendations for additional measures as necessary to achieve full compliance by the final date.	<b>1 April 2016</b> <b>1 December 2016</b>
<b>Full compliance.</b> Submit report demonstrating compliance with the final effluent limitations for arsenic and manganese.	<b>1 March 2017</b>

**T E N T A T I V E**

3. The following interim effluent limitations shall be effective immediately. The interim effluent limitations for arsenic and manganese shall be effective until **1 March 2017**, or when the Discharger is able to come into compliance, whichever is sooner.

Parameter	Average Monthly Effluent Limitation
Arsenic ( $\mu\text{g/L}$ )	37
Manganese ( $\mu\text{g/L}$ )	172

4. Any person signing a document submitted under this Order shall make the following certification:

*"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

5. In accordance with Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the required activities. All technical reports specified herein that contain work plans for, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain the professional's signature and/or stamp of the seal.

If, in the opinion of the Executive Officer, Sterling Caviar, LLC fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order or with the WDRs may result in the assessment of Administrative Civil Liability of up to \$10,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268, 13350 and 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality)

or will be provided upon request.

This Order is effective upon the date of adoption.

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CEASE AND DESIST ORDER R5-2015-XXXX  
STERLING CAVIAR LLC ELVERTA FACILITY  
SACRAMENTO COUNTY

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I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on XX April 2015.

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PAMELA C CREEDON, Executive Officer

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## V. TAKE AVOIDANCE, MINIMIZATION AND MITIGATION

The conservation strategy contained in Chapter IV describes the acquisition and habitat management guidelines to be employed by the Natomas Basin Conservancy. In addition to TNBC programs, the Permittees will each conduct various activities and apply various operational guidelines to avoid, minimize, and mitigate the take of Covered Species resulting from Authorized Development and Water Agency O&M activities within the Natomas Basin.

The measures presented in this Chapter are organized into three categories: measures that relate to the Land Use Agencies (City of Sacramento and Sutter County); measures that relate to the TNBC as a Permittee, and measures that relate to the Water Agencies (RD 1000 and Natomas Mutual).

### A. LAND USE AGENCIES' CONSERVATION

In addition to accepting and transferring to TNBC Mitigation Fees, and possibly land dedications, as required under the NBHCP, the Land Use Agencies shall implement a variety of measures that will avoid, minimize or mitigate the take of Covered Species ("Conservation Measures"). These Conservation Measures shall be implemented or monitored by the involved Land Use Agency for development projects as conditions in Urban Development Permits, as well as for public projects sponsored by the respective Land Use Agency.

#### 1. Pre-Construction Surveys

Not less than 30 days or more than 6 months prior to commencement of construction activities on specific Authorized Development sites in the NBHCP area, a pre-construction survey of the site shall be conducted to determine the status and presence of, and likely impacts to, all Covered Species on the site. However, pre-construction surveys for an individual species may be completed up to one year in advance if the sole period for reliable detection of that species is between May 1 and December 31. The applicant seeking to develop land will be responsible for contracting with qualified biological consultants to carry out the pre-construction surveys, and as necessary, to implement specific take minimization, and other Conservation Measures set forth in the NBHCP and approved by the Wildlife Agencies.

\* The results of the pre-construction surveys along with recommended take minimization measures shall be documented in a report and shall be submitted to the Land Use Agency, USFWS, CDFG and TNBC. Based upon the survey results, the Land Use Permittees will identify applicable take avoidance and other site specific Conservation Measures, consistent with this NBHCP, required to be carried out on the site. The approved pre-construction survey documents and list of Conservation Measures will be submitted by the developer of the Authorized Development project to the applicable Land Use Agency to demonstrate compliance with the NBHCP.

Reconnaissance level surveys should be conducted prior to species specific surveys to determine what habitats are present on a specific development site and what, if any, more intensive survey activities should be conducted to accurately determine the status of the Covered

Species on the site. It shall be the obligation of the developer/landowner to complete July 25, 2002 such surveys and the Land Use Agency Permittees's responsibility to ensure the surveys are properly completed prior to disturbance of habitat. Surveys shall be conducted by qualified personnel (e.g., persons with suitable biological, botanical, or related expertise). Note: negative species-specific survey results generally do not obviate the requirement to implement minimization measures prescribed in the revised NBHCP where a pre-construction survey indicates that habitat for a particular listed species exists onsite.

## **2. Preservation of the Area Adjacent to Fisherman's Lake**

Fisherman's Lake and portions along both sides are and will continue to be, owned and managed by RD 1000. Also, RD 1000 has an easement on portions of the land along the east side of Fisherman's Lake. The easement was granted for flood control purposes and all uses not inconsistent with flood control were reserved to the land owner. The City shall create a buffer on the City side of Fisherman's Lake. Towards that end, the City of Sacramento approved the necessary action in June 2003 to amend the North Natomas Financing Plan to include the buffer area along Fisherman's Lake in the Land Acquisition Program (i.e., development impact fees will be increased to fund acquisition of the buffer area). The buffer area will be managed by TNBC.

According to the City's North Natomas Community Plan, the buffer area along Fisherman's Lake is a 250 foot wide land area stretching from Del Paso Road to El Centro Road on the City side of Fisherman's Lake, a portion of the West Drain. The east side of Fisherman's Lake is in the City of Sacramento and the west side is in the unincorporated portion of Sacramento County. Pursuant to the Settlement Agreement, the City has agreed to initiate a North Natomas Community Plan amendment to potentially widen the agricultural buffer along the City side of Fisherman's lake to 800 feet wide.

As of July 2002, TNBC owns 136 acres of Mitigation Land on the Sacramento County side of Fisherman's Lake, in partial compliance with the City of Sacramento's Settlement Agreement that requires acquisition of 250 acres of Mitigation Land in Zone 1.

Giant garter snakes, Swainson's hawks and other Covered Species inhabit the Fisherman's Lake area, a portion of the West Drain. According to the 2000 Annual Survey Results for the Swainson's Hawk, dated September 2000, prepared by the Swainson's Hawk Technical Advisory Committee, there are three nests along Fisherman's Lake. No data was available for the nests in 1998; 3 young were fledged from two of the nests in 1999; and two of the three nests were inactive and the third nest was active but failed to fledge any young in 2000. Also, Figure 5 in the 2000 Field Season Report for the Giant Garter Snake, dated December 21, 2000, and prepared by USGS, indicates the use of Fisherman's Lake by giant garter snakes.

## **3. General Measures to Minimize Take**

In order to generally minimize the impacts of development on Covered Species, the City of Sacramento and Sutter County shall impose the following requirements on Authorized Development when approving Urban Development Permits within the Natomas Basin:

- a. Tree Preservation: Valley oaks and other large trees should be preserved whenever possible. Preserve and restore stands of riparian trees used by Swainson's hawks and other animals for nesting, particularly adjacent to Fisherman's Lake.
- b. Native Plants: Improve the wildlife value of landscaped parks, buffers, and developed areas by planting trees and shrubs which are native to the Natomas Basin and therefore are used by native animals.
- c. Protect Raptor Nests: Avoid the raptor nesting season when scheduling construction near nests. Specific avoidance criteria are set forth in the species specific measures later in this chapter.
- d. Protected Plant/Animal Species, also referred to as "Special Status Species": Search for protected plants species during flowering season prior to construction and protected animal species during the appropriate season.

#### 4. Measures to Minimize Take of Vernal Pool Species

Vernal pool resources within the Natomas Basin are limited to small pools generally located in the far eastern portion of the Natomas Basin. Intact vernal pool complexes are not known to occur within the City or the Sutter County Land Use Agencies' Permit Areas. However, it is possible that isolated vernal pools exist within the Permit Areas of the City and the County and, therefore, would be subject to disturbance by Authorized Development or other Covered Activities.

Vernal pool resources within the City and the Sutter County Permit Areas shall be identified prior to disturbance through pre-construction surveys and other biological investigations. Such resources shall be discovered either through the early CEQA project review (required for general plan, specific plan, rezone, subdivision and other discretionary approvals of the Land Use Agencies) or during the pre-construction surveys required under the NBHCP. The following measures shall be implemented by the Land Use Agencies prior to issuance of Urban Development Permits when public or private development projects are proposed for areas that may support wetlands and/or vernal pool species. *(Note: The following mitigation measures do not replace or exempt an applicant from applying for and complying with Section 404 of the Clean Water Act and the related Section 7 consultations with USFWS in the event such resources are determined to be subject to Section 404. Rather, these mitigations set the standard for mitigation of vernal pool resources in the NBHCP area.)*

##### a. General Biological Survey and Information Required.

In the event a biological reconnaissance survey or the pre-construction survey identifies that vernal pool resources are on-site, a vernal pool species specific biological assessment must be provided by the developer to the Land Use Agency during the appropriate season (as established by USFWS)—to determine the type and abundance of species present. The species specific biological assessment must address covered vernal pool plants (i.e., Sacramento Orcutt grass,

slender Orcutt grass, Colusa grass, legenere, and Bogg's lake hedge-hyssop), crustaceans (i.e., vernal pool tadpole shrimp, vernal pool fairy shrimp, and midvalley fairy shrimp), and amphibians (i.e., California tiger salamander and western spadefoot toad). The vernal pool plant survey must be a USFWS-approved plant survey prepared by a USFWS-approved qualified field biologist and shall list the methods of field analysis, condition of habitat, size and acreage of direct and indirect impact (as defined by seasonal inundation and hydric soils and other appropriate characteristics), and species present. The vernal pool crustacean species survey shall be in accordance with the USFWS Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods (April 19, 1996) or the most recent approved USFWS survey guidelines for vernal pool species (Appendix L). This assessment must be submitted with the urban development permit application and prior to approval of an Urban Development Permit by the Land Use Agency.

If it is determined that wetland and/or vernal pool resources would be disturbed by a project, then take of vernal pool associated Covered Species would be covered under the NBHCP, subject to the following limitation and guidelines:

- (1) Where site investigations indicate vernal pool species may occur, the developer shall notify the Land Use Agency regarding the potential for impacts to vernal pool species. Such notification shall include biological data (see Section (a) above regarding biological information required) adequate to allow the Land Use Agency, and the USFWS and CDFG to determine the potential for impacts to vernal pool species resulting from the proposed development.
- (2) Following notification by the Land Use Agency, USFWS and CDFG shall identify specific measures required to avoid, minimize and mitigate impacts to vernal pool species to be implemented prior to disturbance and in accordance with adopted standards or established guidelines (e.g., the USFWS programmatic biological opinion for vernal pool species attached as Appendix G as it may be amended from time to time). In some cases, USFWS and CDFG may require complete avoidance of vernal pool species, such as where Covered Species such as slender orcutt grass, Sacramento orcutt grass, Colusa grass and/or vernal pool tadpole shrimp are found to be present. Such measures shall be identified by USFWS and CDFG within 30 days or as soon as possible thereafter of notification and submittal of biological data to the agencies by the Land Use Agency.
- (3) The requirement by USFWS to preserve a vernal pool within development would be based on identification of an intact vernal pool with minimal disturbance where the presence of one or more of the following species is recorded: slender orcutt grass, Sacramento orcutt grass, Colusa grass, or vernal pool tadpole shrimp.

Prior to requiring on-site preservation of a vernal pool area, USFWS shall consider the suitability of the vernal pool as TNBC Mitigation Lands. No such

preservation requirement shall be made unless the vernal pool is a suitable site for TNBC Mitigation Lands. Such vernal pool areas, including any required buffer land dedication, shall apply toward the Land Acquisition Fee component of the development project's NBHCP mitigation obligation.

- b. Mitigation Strategies: Vernal pool resources (i.e., vernal pool fairy shrimp, vernal pool tadpole shrimp, midvalley fairy shrimp, Sacramento Orcutt grass, slender Orcutt grass, Colusa grass, legenere, and Bogg's Lake hedge-hyssop) identified through site specific investigations shall be mitigated in one of three general approaches as described below. Strategies to minimize and mitigate the take of the California tiger salamander and western spadefoot toad shall be conducted according to Sections V.A.5 and V.B.4.

(1) Avoidance and Preservation On-Site as a Means to Minimize Impacts

In the event USFWS requires on-site preservation in accordance with Section a.3 above, on-site mitigation shall be required. In the event USFWS does not require on-site mitigation, a developer or private land owner may still propose to dedicate fee title or conservation easement for that portion of the property with vernal pool resources and an associated 250-foot buffer surrounding the vernal pool resource to the TNBC. Acceptance of the offer to dedicate shall be subject to review and approval by the Land Use Agency, TNBC Board and the Wildlife Agencies. The TNBC Board and the Wildlife Agencies shall consider the location, connections, species present, condition of the proposed site to be dedicated, and may decide to accept the dedication in lieu of payment of the Land Acquisition Fee portion of the NBHCP Mitigation Fee for the affected acreage. TNBC Board may accept or decline the offer based on the balance of habitat needs and the biological goals of the HCP. If the dedication is accepted, a reduction in the Land Acquisition Fee portion of the habitat Mitigation Fee shall be granted the developer for the portion (calculated on an acreage basis) of the site permanently preserved by easement or dedication. However, habitat Mitigation Fees, in full, must be paid on the remaining developable acreage on the site, and all fees other than Land Acquisition Fees shall be paid for all acres on the site. Additional conditions to preserve the biological integrity of the site (such as reasonable drainage conditions) may be imposed by the Land Use Agency in consultation with TNBC and the TAC.

In the event the developer does not support on-site preservation or TNBC does not accept the offer to dedicate, then one of the following mitigation approaches shall be employed.

(2) Construction Period Avoidance and Relocation of Vernal Pool Resources.

Relocation of vernal pool resources and commencement of Authorized Development shall be subject to the following mitigation measures will be required:

- (a) No grading, development or modification of the vernal pool site or the buffer area extending 250 feet around the perimeter of the vernal pool site may occur during the vernal pool "wet" season as identified by USFWS.

Protective fencing shall be established around the perimeter of the vernal pool site and the buffer area during the vernal pool wet season.

- (b) In consultation with TNBC and the TAC, soils and cysts from the vernal pool may be relocated as soon as practicable during the dry season to a suitable TNBC or other reserve site provided the relocation/recreation site is approved by TNBC, and the USFWS.

If it is not practicable to relocate vernal pool resources, and/or TNBC or USFWS determine that TNBC does not have a suitable reserve site for relocation of resources, then the applicant shall follow the mitigation approach outlined in Section (3) below.

(3) Payment Into a USFWS Approved Conservation Bank.

In the event all of the above approaches are not appropriate for the site, the Land Use Agency shall require the developer to purchase credits from a USFWS-approved mitigation bank in accordance with the standards set forth in the following Table V-1. USFWS shall determine the type and amount of credits to be purchased based on the impacts associated with the development.

Mitigation ratios for credits dedicated in Service-approved mitigation banks or for acres of habitat outside of mitigation banks shall be as follows:

**TABLE V-1  
MITIGATION RATIOS**

	<b>Bank</b>	<b>Non-Bank</b>
Preservation	2:1	3:1
Creation	1:1	2:1

**Preservation Component:** For every acre of habitat directly or indirectly affected, at least two vernal pool credits will be dedicated within a Service-approved ecosystem preservation bank, or based on Service evaluation of site-specific conservation values, three acres of vernal pool habitat may be preserved on the project site or on another non-bank site as approved by the Service.

**Creation Component:** For every acre of habitat directly affected, at least one vernal pool creation credit will be dedicated within a Service-approved habitat mitigation bank, or based on Service evaluation of site-specific conservation values, two acres of vernal pool habitat created and monitored on the project site or on another non-bank site as approved by the Service.

## 5. **Measures to Reduce Take for Individual Species**

Identified below are specific measures that will be imposed as conditions on Urban Development Permits or implemented for public works projects, and enforced by the Land Use Agencies to mitigate, minimize and avoid take of each NBHCP Covered Species, as related to urban development. Specific measures to avoid, minimize and mitigate take resulting from TNBC and Water Agency Covered Activities are provided in Sections V.B and V.C., respectively.

### a. Measures to Reduce Take of Giant Garter Snake

- (1) Within the Natomas Basin, all construction activity involving disturbance of habitat, such as site preparation and initial grading, is restricted to the period between May 1 and September 30. This is the active period for the giant garter snake and direct mortality is lessened, because snakes are expected to actively move and avoid danger.
- (2) Pre-construction surveys for giant garter snake, as well as other NBHCP Covered Species, must be completed for all development projects by a qualified biologist approved by USFWS. If any giant garter snake habitat is found within a specific site, the following additional measures shall be implemented to minimize disturbance of habitat and harassment of giant garter snake, unless such project is specifically exempted by USFWS.
- (3) Between April 15 and September 30, all irrigation ditches, canals, or other aquatic habitat should be completely dewatered, with no puddled water remaining, for at least 15 consecutive days prior to the excavation or filling in of the dewatered habitat. Make sure dewatered habitat does not continue to support giant garter snake prey, which could detain or attract snakes into the area. If a site cannot be completely dewatered, netting and salvage of prey items may be necessary. This measure removes aquatic habitat component and allows giant garter snake to leave on their own.
- (4) For sites that contain giant garter snake habitat, no more than 24-hours prior to start of construction activities (site preparation and/or grading), the project area shall be surveyed for the presence of giant garter snake. If construction activities stop on the project site for a period of two weeks or more, a new giant garter snake survey shall be completed no more than 24-hours prior to the re-start of construction activities.
- (5) Confine clearing to the minimal area necessary to facilitate construction activities. Flag and designate avoided giant garter snake habitat within or adjacent to the project as Environmentally Sensitive Areas. This area shall be avoided by all construction personnel.