

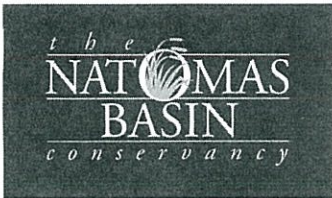
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February 22, 2016

Recovery Division
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

RE: Draft Giant Garter Snake Recovery Plan Comments

To the U.S. Fish and Wildlife Service:



This letter constitutes comments from the Natomas Basin Conservancy, Plan Operator of the Natomas Basin Habitat Conservation Plan and the Metro Air Park Habitat Conservation Plan ("HCPs"), both of which operate in the approximate 54,000-acre Natomas Basin of California. Our comments are not intended to be comprehensive, but rather, to specifically address the revised draft of the Giant Garter Snake Recovery Plan ("GGSRP") as it pertains to implementation of the above-referenced HCPs.

Land supply and demand considerations and implement-ability of the HCPs. The most important comment the Conservancy wishes to make has to do with the likely effect of implementation of the GGSRP directive to add at least one of the "block pair" units proposed (see p. II-16 of the Revised Draft GGSRP) to the Natomas Basin. The block pair proposed would consist of one 240-hectare (539-acre) buffered contiguous perennial wetland habitat and one 639-hectare (1,578-acre) block of contiguous active rice fields, both separated by no more than five miles. (The HCPs call for 1,750 acres of marsh and 4,375 acres of rice habitat.)

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John R. Roberts
Executive Director

We concur that more watered habitat for the GGS would enhance the Conservancy's ability to be even more successful protecting and advancing populations of GGS. However, we are also aware that there is a very serious issue of the adequacy of mitigation land necessary to carry out and fully implement the HCPs. We believe, and have long held, that it will be difficult to obtain the necessary number of acres inside the Natomas Basin to fully implement the HCPs. Since our original expression in this regard many years ago, several hundreds of acres of land relied upon for mitigation support under the HCPs have either been urbanized or are now in active consideration to be urbanized. Usually, land immediately proposed for urbanization is de-watered and incumbent trees are felled, so that any chances of utilizing the acreage as planned for in the HCPs is precluded. Typically, the HCP's "Covered Species," which rely on that acreage, are extirpated.

To have additional land removed from availability for use as mitigation under the HCPs would be to make implementation of the HCPs even more challenging. All these land uses that take place outside the HCP's 17,500-acre "Permit Area" acreage are cumulative. They are removed from service under the HCPs as planned, and in perpetuity.

We ask that the Service seriously examine the commitments for mitigation land under its approved HCPs in the Natomas Basin. Following that, we recommend the Service make a detailed calculation as to whether or not there is sufficient acreage

remaining in the Natomas Basin to add this new GGRP demand without further challenging the implementation of the HCPs.

Method of estimating GGS populations. We encourage the Service to examine a matter that confounds the Conservancy as Plan Operator of GGS-centric HCPs. Most importantly, we are concerned about what might be called trap bias. We suspect that by relying on minnow traps as the exclusive or near-exclusive means of GGS capture and counting, there may be a bias favoring smaller snakes. We suspect that larger animals, especially mature, gravid females, may be less inclined to utilize a standard minnow trap and therefore not be captured and counted. This becomes an issue when demographic data on GGS reveals declining animal size. We believe that there is a real possibility that the size of GGS in the Natomas Basin has not declined over time, but rather, may well be the same. We also believe that in order to get a better data set, restoration of hand-capture techniques ought to be considered to test our suspicion.

Implications of parasites on GGS health. We call to your attention another item, in this case one that has to do with GGS health. We have seen a dramatic improvement in water quality in water conveyance structures inside the Natomas Basin in recent years, and with that, aquatic life has been enhanced in them. We believe that nematode and other parasite populations are now abundant when just 25 years or so ago, they were far lower in number. There is some considerable concern that GGS are becoming burdened with increasing numbers of parasites, including nematodes. This is apparent or evident when captured GGS show cysts, the sac of which contains eggs or larvae of parasites. We believe research should be directed to focus on GGS health, and that parasites and their impact on GGS should be a key focus of any recovery effort.

Using existing models as analogs for the Recovery Plan. Finally, we point to successes during the past 16 years in GGS populations in the Natomas Basin under the HCPs. Third-party biological monitoring (by USGS personnel and scientists) confirm that the system and processes devised in the HCPs is working and provably successful. We believe that the final GGSRP should call heavily on the HCPs for guidance and direction as to how to make headway with this key and very important animal.

Thank you for your attention.

Sincerely,

The Natomas Basin Conservancy, a California Non-profit
Public Benefit Corporation



By: John Roberts
Executive Director



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FEB 24 2016

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File No. 99999

February 22, 2016

VIA EMAIL

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

Re: Draft Recovery Plan for the Giant Garter Snake

Dear Ms. Norris:

We represent South Sutter LLC and South Sutter Investors, LLC (collectively, the "Sutter Landowners"), the owners and optionees of approximately 2,500 acres of undeveloped land (the "Sutter Properties") in south Sutter County and located within the permit area of the Natomas Basin Habitat Conservation Plan ("NBHCP"). The Sutter Properties comprise approximately one-third of the remaining undeveloped land within the NBHCP. The Sutter Landowners have spent over \$25.0 million on land use entitlements, planning, engineering and preliminary infrastructure to build the Sutter Pointe Specific Plan, a residential mixed-use community planned in the Sutter County portion of the permit area.

We have reviewed the draft recovery plan (the "Draft Recovery Plan") for Giant Garter Snake ("GGS") published in the Federal Register on December 22, 2015, and offer the following comments on behalf of the Sutter Landowners:

The "Recovery Criteria" contained in the Draft Recovery Plan (Section D. p. II-14) contain a recommendation for the acquisition of additional "block pairs" of GGS habitat consisting of (i) one 539-acre block of contiguous buffered perennial wetland habitat, and (ii) one 1,589-acre block of contiguous active ricelands separated by not more than five miles. These targets are based upon a study by Wylie, *et al.* (2010), of the Badger Creek population of GGS, which is stated to be a self-sustaining population reliant on wetland habitat and riceland areas of these acreages. The Draft Recovery Plan states that these "values do not represent a minimum or maximum acreage for either perennial wetlands or ricelands, but represent target values." Draft Recovery Plan, Page II.15, fn. 1.

The NBHCP is located in the Natomas Basin Management Unit within the American Basin Recovery Unit. As acknowledged by the Draft Recovery Plan, the Natomas Basin Conservancy ("TNBC") has already assembled a substantial preserve within the Natomas Basin. Nonetheless, the Draft Recovery Plan calls for the establishment of "no less than" one block pair of habitat in the Natomas Basin *in addition to* the preserve already required under the NBHCP.

The feasibility of this measure is doubtful at best. Certainly this additional acquisition cannot be the responsibility of TNBC, which would be unable to collect development fees in light of the restrictions and assurances contained in the NBHCP and its implementing agreement (the "IA"). The IA permits TNBC to increase fees to address justified prospective increases in the managed marsh component of the NBHCP, but there is no funding for additional preserves, particularly at the scale suggested by the Draft Recovery Plan. And even if TNBC were permitted to raise fees to fund these acquisitions, it is highly unlikely that the plan could bear the high cost of securing land in such a land-constrained area. That is, the financial structure of the NBHCP would likely be broken by this additional burden, particularly in light of the limited development left under the permit limits of the NBHCP.

As you know, Section 10 of the Endangered Species Act requires that funding for a habitat conservation plan be fully ensured. You may also recall that it was the failure of the original NBHCP to meet this requirement that led to Judge Levy's negative declaratory relief ruling against the NBHCP. Accordingly, we believe that any target for the acquisition of additional block pairs of habitat within the Natomas Basin Management Unit would be imprudent. This is true regardless of whether such acquisitions would be funded by TNBC or by third parties without a direct stake in the NBHCP. Even third-party efforts to secure additional block pairs in the management unit would compromise the NBHCP by driving up land costs in an already tightly constrained market.

Regardless of feasibility, the proposal that one additional block pair should be acquired within each management unit appears arbitrary to us. TNBC has already done an excellent job of reserve assemblage within the Natomas Basin Management Unit. The Draft Recovery Plan offers no support for the notion that acquisitions in Natomas should be doubled down while acquisitions in the other management units need to consist of only a single block pair. In our view, the job of recovery within the Natomas Basin has already been accomplished, or will be upon the completion of the NBHCP reserve assemblage. Certainly that was the conclusion of the USFWS when it adopted the NBHCP and issued incidental take authority thereunder. Accordingly, we recommend that there be no target for additional acquisitions within the Natomas Basin Management Unit.

As an alternative to requiring acquisitions in the Natomas Basin directly, USFWS could consider shifting its acquisition target (at least with respect to the Natomas

Ms. Jennifer Norris
Field Supervisor
U.S. Fish and Wildlife Service
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Basin Management Unit) to "Area B" outside the Natomas Basin. As you may recall, the NBHCP permits – subject to the approval of USFWS and CDFW – up to twenty percent (20%) of the NBHCP reserve to be located in Area B. The acknowledgment that impacts in the Natomas Basin are mitigable through acquisitions in Area B – and still consistent with the recovery of GGS as envisioned in the NBHCP – is based upon an understanding that the Natomas Basin snakes are not so very different from snakes elsewhere in the Recovery Unit, or at least within the adjacent Area B. That rationale should carry through to the recommendations in the Draft Recovery Plan. This would allow the Draft Recovery Plan to maintain its overall goal of eight additional block pairs in the American Basin without compromising the feasibility of NBHCP reserve acquisitions.

The NBHCP has functioned successfully for well over a decade now, resulting in the preservation of a very significant reserve system supporting the recovery of the Giant Garter Snake. **The Recovery Plan ultimately adopted by USFWS should not undermine this contribution – or the future success of the NBHCP – by calling for an expanded reserve system within the Natomas Basin or otherwise altering the structure, operations or conservation requirements of the NBHCP.** As acknowledged in USFWS' findings when it adopted the NBHCP, the conservation requirements contained in that plan represent (in accordance with the requirements of Section 10(a) of the Endangered Species Act) the maximum practicable extent of mitigation that can be established within the Natomas Basin. **We therefore request that the Draft Recovery Plan be amended to (i) delete the requirement for additional land acquisitions in the Natomas Basin, (ii) make clear that no changes to the conservation strategy under the NBHCP are required or recommended, and (iii) open the possibility of acquisition of additional reserves (whether by TNBC or others) in Area B as a proxy for additional conservation in the Natomas Basin.**

We thank you for this opportunity to comment, and look forward to your response.

Sincerely,



R. Clark Morrison

RCM/sbl
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cc: George Carpenter, Winn Communities
Robert Shattuck, Shattuck Planning and Management
Danelle Stylos, Sutter County Development Services Department
John Roberts, Natomas Basin Conservancy
Angelo Christie, South Sutter Investors, LLC



February 22, 2016

Sacramento Fish and Wildlife Office
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, CA 95825

RE: Revised Draft Recovery Plan for the Giant Garter Snake

Dear Sir/Madam:

This letter is being submitted on behalf of the North State Building Industry Association (BIA) to provide comments on the Revised Draft Recovery Plan for the Giant Garter Snake (as noticed in 80 Fed. Reg. 79606 [Dec. 22, 2015], hereafter "Recovery Plan"). The BIA is a trade association based in the Sacramento area, which represents member companies including homebuilders, trade contractors, architects, engineers, designers, suppliers and industry professionals in the homebuilding, multi-family and mixed-use development markets. BIA members participate in Habitat Conservation Plans and Section 7 consultations throughout Northern California, and are stakeholders in discussions regarding the protection of endangered at both state and federal levels. In light of such commitment, BIA has significant concerns about the likely cost and infeasibility of accomplishing the Recovery Criteria and Recovery Actions set forth in the Recovery Plan, as described further below.

Recovery Criteria Are Arbitrary and Overly Broad

The Recovery Plan includes several recovery criteria described as supporting the eventual delisting of giant garter snake, and dedicates several pages to describing habitat protection (pp. II-14 to II-17). The Recovery Plan identifies habitat preservation goals for each recovery unit, but those goals are not supported by scientific information and are thus arbitrary. Most notably, the Recovery Plan describes an approach of securing blocks of contiguous wetland and rice habitat, to be evenly distributed among the recovery units. Pairs of habitat blocks would each be more than 2,000 acres, and the Recovery Plan calls for 53 such pairs of habitat blocks to be preserved, for a total of more than 112,000 acres of land to be added to existing conservation lands for the giant garter snake, not including buffers and connectivity corridors. On this point, the Recovery Plan cites only one report describing one snake population that is not representative of habitat conditions or population behaviors of the snake across its range (p. II-15). The Recovery Plan itself demonstrates that reliance on this one report is misplaced, by stating the need to research giant garter snake habitat requirements (p. III-3). Until better information is available to determine specific habitat requirements based on population location and existing

on-the-ground conditions, it is premature to identify habitat preservation goals on the order of magnitude contemplated in the Recovery Plan.¹

Similarly, the Recovery Plan states that the habitat blocks described above would be connected by habitat corridors at least one-half mile wide. This corridor width is based “on the distance a giant garter snake is known to travel in one day,” citing one report without further explanation (p. II-15). By contrast, another study observed that giant garter snakes did not travel more than 984 feet (p. I-8). While the latter citation undermines the former, neither of these distances provides a scientific basis for suggesting that snake travel distances should dictate the width of connectivity corridors. The Recovery Plan also states that further research is needed to determine whether protecting such corridors is effective (p. III-4). Connectivity between any habitat preserves should be based on site-specific conditions, and the dimensions of such connectivity corridors cannot reasonably be dictated in the one-size-fits-all approach identified in the Recovery Plan.

Further demonstrating the lack of scientific support in this document, the Recovery Plan states that habitat blocks must be surrounded by a 0.32-mile wide buffer, without a single citation to a scientific source. Rather, the Recovery Plan states the need to research buffer requirements (p. III-4). In our view, it is inappropriate to set buffer widths at this time without a documented scientific basis.

The Recovery Plan also contains arbitrary and undefined goals for water supply quantity and quality for giant garter snake preserves. Specifically, the Recovery Plan states that preserves will be supplied with water of an undefined “sufficient quantity” that would be “free of contaminants” or contain only harmless levels of contaminants, without defining what those contaminants or safe levels might be (pp. II-16 to II-17). Instead, the Recovery Plan indicates it must “study the effects of ... contaminants on giant garter snakes,” and “investigate” ways to supply uncontaminated water to wildlife refuges (p. III-2). There is a lack of current scientific information on these points that must be remedied before broad undefined parameters such as “sufficient quantity” and “free of contaminants” can be discussed.

The above examples demonstrate the arbitrary nature of the Recovery Plan criteria. The knowledge gaps must be remedied before a meaningful Recovery Plan can be prepared and reviewed. Furthermore, the Recovery Plan contains no analysis of the feasibility of the sweeping habitat preservation goals mentioned above.² The Recovery Plan contains no evidence that the desired habitat blocks actually exist on the ground and/or are available for conservation, nor does it analyze whether it is possible to connect the habitat blocks in the contemplated manner.

¹ Also notably, the Recovery Plan fails to discuss a 2015 report, which would seemingly provide the most current scientific information about population genetics and would inform the selection of management units and priorities for habitat preservation. (See Dustin A. Wood, et al. (2015) *Defining population structure and genetic signatures of decline in the giant garter snake (Thamnophis gigas): implications for conserving threatened species within highly altered landscapes*.) This paper should be analyzed in the next draft of the Recovery Plan.

² Even assuming a conservative land acquisition cost of \$10,000 per acre, the cost of acquiring these habitat blocks would reach approximately \$1 billion.

Similarly, the Recovery Plan does not address the feasibility of providing water during the driest months of the year when water is at its scarcest and most costly, particularly in light of California drought cycles and the potential use of groundwater to supplement surface flows. Any future draft of this Recovery Plan should remedy the lack of scientific basis and evaluate the feasibility of the recovery criteria.

Recovery Plan Cannot Be Meaningfully Reviewed Without Cost Information

The Recovery Plan states that it lacks the statutorily required cost information, and indicates that a revised draft including cost information will be circulated for public review. The BIA looks forward to reviewing the cost information in the future draft. As noted above, the likely cost of land acquisition alone is likely near \$1 billion dollars—the implications of such a high implementation cost, as well as an evaluation of likely funding sources, must be addressed in the future draft.

Conclusion

The BIA recognizes that recovery plans are not regulatory documents, rather they are “advisory documents” with no specific protections, prohibitions, or requirements afforded to a species solely on the basis of the recovery plan.³ Nonetheless, the Endangered Species Act defines parameters for such recovery plans. “[T]o the maximum extent practicable,” a recovery plan must include: (i) “a description of such site-specific management actions as may be necessary to achieve the plan’s goals for the conservation and survival of the species,” (ii) “objective, measureable criteria” for delisting, and (iii) “estimates of the time required and the cost to carry out those measures needed to achieve the plan’s goal and to achieve intermediate steps toward that goal.” (16 U.S.C. § 1533, subd. (f)(1)(B)).) The Recovery Plan lacks scientific support and on-the-ground feasibility analysis, and therefore does not satisfy the statutory requirements for site-specific management actions or objective, measurable criteria. The Recovery Plan also lacks the requisite cost analysis. For these reasons, the Recovery Plan cannot be finalized without first being revised and subjected to another publicly noticed review.

The BIA appreciates this opportunity to comment, and looks forward to review of a future, more complete, draft.

Regards,



Michael Strech
President/CEO

³ See *Friends of Blackwater v. Salazar* (D.C. Cir. 2012) 691 F.3d 428, 434 [FWS “analogizes a recovery plan to a map or a set of directions that provides objective measurable steps to guide a traveler to his destination . . . as with a map . . . it is possible to reach one’s destination – recovery of the species – by a pathway neither contemplated by the traveler setting out nor indicated on the map”], citing *Fund for Animals v. Rice* (11th Cir. 1996) 85 F.3d 535, 547 [“recovery plans are for guidance purposes only”].