

From: Terry, Joseph <joseph_terry@fws.gov>

Sent: Monday, February 11, 2019 7:29 AM

To: Guerra, Erika (San Ramon) USA <Erika.Guerra@lehighhanson.com>

Cc: Wines, Brian@Waterboards <Brian.Wines@waterboards.ca.gov>; Hoem, Christopher <christopher.hoem@pln.sccgov.org>; Gregg, Jack@Waterboards <Jack.Gregg@waterboards.ca.gov>; Blinn, Brenda@Wildlife <Brenda.Blinn@wildlife.ca.gov>; Garrison, Kristin@Wildlife <Kristin.Garrison@wildlife.ca.gov>; Granquist, Nicole <ngranquist@DowneyBrand.com>; Eastwood, Rob <Rob.Eastwood@pln.sccgov.org>; Ryan Olah <ryan_olah@fws.gov>; Hess, Keith D SPN <Keith.D.Hess@usace.army.mil>

Subject: Re: [EXTERNAL] FW: Responsive Information - Permanente Creek Restoration Project, Santa Clara County (File Number 2008-00356)

Erika and all,

I have the following comments on your January 31, 2019, letter responding to USFWS's August 9, 2017, letter requesting additional information on the proposed Permanente Creek Restoration Project in Santa Clara County (Corps file # 2008-00356; USFWS file # 08ESMF00-2016-TA-2377).

1. For the USFWS's biological opinion, we need clear information on the total acres over which incidental take of the California red-legged frog may occur (i.e., harm, capture, injury, or mortality) and the total acres of each habitat type that would be disturbed. On page 3 (#7) of your letter, you refer to the "23-acre restoration project area (including staging areas that would be used during restoration project implementation)." Thus, 23 acres appears to be the estimate for the total acreage over which incidental take of the California red-legged frog may occur. However, Table 6 on pages 1-2 of your letter refers to a total 8.9 acres of habitat that would be disturbed (8.7 acres temporarily and 0.2 acre permanently), 8.6 acres that would be enhanced, and 10.8 acres that would be restored. Please clarify the discrepancy between the 23-acre restoration area (including staging areas) and the estimates of habitat disturbance in Table 6. Is the difference based on the inclusion of unsuitable areas (e.g., developed or otherwise unvegetated) in the 23-acre restoration area estimate? If so, any California red-legged frogs dispersing through these unsuitable areas could still be incidentally taken during project work activities, and thus should be considered in the estimates of incidental take; however, the effects analysis can more clearly specify how much of the work area contains suitable habitat for the California red-legged frog that would be disturbed (and would be enhanced or restored).
2. Your letter states that additional information will be provided in a revised Biological Assessment (e.g, sediment cleanout of Pond 30, additional cumulative effects analysis, additional project features, etc.). Therefore, USFWS will wait to provide any additional comments/requests for additional information once we have received and reviewed the revised Biological Assessment.
3. USFWS's August 9, 2017, letter (# 5) requested information on "the construction of a new water treatment plant, and the installation of new flow diversion or outlet points along Permanente Creek. The success of the proposed riparian restoration in the proposed project may be affected by any proposed changes in the flow regime in Permanente Creek due to a new water treatment plant and/or new flow diversion or outlet points along Permanente Creek." I heard from Brian Wines of the San Francisco Regional Water

Quality Control Board that seasonal flow requirements had been worked out with the NPDES for the reach of Permanente Creek within the action area. The revised Biological Assessment should include this and any additional relevant information on stream flow requirements and other activities within or near the action area that may affect the California red-legged frog.

4. USFWS's August 9, 2017, letter (# 6) requested information on: "The Corps or Lehigh should provide more information on the potential for the injury, mortality, or sub-lethal effects to the California red-legged frog due to the excavation of selenium-contaminated sediments within the action area. The Corps or Lehigh should provide information on how these effects would be monitored and minimized." Your January 31, 2019, letter says that this issue will be addressed in the revised Biological Assessment. I have attached information provided to me by our Contaminants Division on potential selenium effects on California red-legged frogs and other amphibians that may assist in your analysis of the potential effects of the proposed project on the California red-legged frog and whether there could be toxic or sublethal effects to California red-legged frogs within the action area (including the breeding population of California red-legged frogs in Pond 14 which receives water from Permanente Creek). In particular, see pp. 54-57 of the attached "Species at Risk from Selenium Exposure in California Inland Surface Waters, Enclosed Bays and Estuaries" document.
5. Please provide a copy of the Reclamation Plan which the Lehigh Permanente Quarry is operating under.
6. Please provide the Mitigation and Monitoring Plan for USFWS to review.

Thanks,

Joseph Terry