



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
08EVEN00-2016-SL-0069

December 7, 2015

Stephanie Jennings, Deputy Federal Project Director
U.S. Department of Energy
4100 Guardian Street, Suite 160
Simi Valley, California 93063

Subject: Updated Species List for Santa Susana Field Laboratory Areas I through IV and Adjacent Undeveloped Lands, Ventura County, California

Dear Ms. Jennings:

We are responding to your request received via electronic mail on October 30, 2015 for updated information on federally listed and candidate species and critical habitat that may occur at the Santa Susana Field Lab (SSFL) Areas I through IV and adjacent undeveloped lands, in Ventura County, California. We understand that the Department of Energy (DOE) is the lead federal agency responsible for clean-up of Area IV and two adjacent undeveloped areas of SSFL, and that DOE would assume responsibility for these areas under section 7 of the Endangered Species Act of 1973, as amended (Act). We support your decision to conduct a site-wide biological assessment, which will allow DOE and the U.S. Fish and Wildlife Service (Service) to better evaluate impacts to species within DOE's area of responsibility with consideration of simultaneous effects to species that would occur in adjacent areas of the site. This letter supersedes all previous species lists for the subject site and is considered valid for 180 days.

The enclosed list of species fulfills the requirements of the Service under section 7(c) of the Act. The enclosed list remains unchanged from the list provided to you in a letter dated April 14, 2014. The DOE, as the lead federal agency for the project, has the responsibility to review its proposed activities and determine whether listed species may be affected. If the DOE determines that a listed species or critical habitat is likely to be adversely affected, it should request, in writing through our office, formal consultation pursuant to section 7 of the Act. Informal consultation may be used to exchange information and resolve conflicts with respect to threatened or endangered species or their critical habitat prior to a written request for formal consultation. During this review process, the DOE may engage in planning efforts but may not make any irreversible commitment of resources. Such a commitment could constitute a violation of section 7(d) of the Act.

In addition to the listed and candidate species and critical habitats described in the enclosed list, the SSFL also supports habitat for migratory birds which are protected under the Migratory Bird Treaty Act (MBTA) and golden eagles which are protected under the MBTA and the Bald and Golden Eagle Protection Act (Eagle Act). The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. The MBTA has no provisions for permitting the incidental take of migratory birds. The Service carries out its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals and industries that proactively seek

to eliminate their impacts on migratory birds (e.g., through coordinating on the development and implementation of an avian protection plan).

The Eagle Act (50 Code of Federal Regulations 22.26, 22.27) prohibits a variety of actions with respect to eagles, including unauthorized "take." "Take" under the Eagle Act is defined as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect or molest, or disturb." Under the Eagle Act, "disturb," under the definition of take, means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. "Substantial interference" was not defined in regulation but refers to interference at or above the level that causes eagles to abandon their nest or that causes injury or loss of productivity. "Injury" could be the direct result of the interference, such as a nestling being knocked from the nest by a startled adult, or it can be indirect, such as a nestling that is fed inadequately because the adults are agitated when in the vicinity of the nest. Loss of productivity refers to a situation where reproductive output is reduced. Some examples of disturbance causing a loss of productivity include adults abandoning a nesting attempt because of human activity in the vicinity, nestlings failing to survive because the adults are deterred from using their primary foraging area and cannot adequately feed them, and pairs of previously successful breeding eagles being underweight and making no nesting attempt the next breeding season after their wintering concentration area is disturbed. The Service addressed the issue of disturbance in detail in its final regulations defining the term (72 Federal Register 31132; June 5, 2007).

The development and implementation of an avian protection plan to avoid take of migratory birds and golden eagles, does not limit or preclude the Service from exercising its authority under any law, statute, or regulation. Ideally, a high quality, scientifically valid, and robust avian protection plan that is implemented in a timely and effective manner, and regularly reviewed and revised as needed, can result in the Service regarding such actions as appropriate means to avoid take of species protected under our various laws while allowing for project development in the most environmentally conscientious ways practicable.

We also recommend that you continue coordinating with the California Department of Fish and Wildlife to identify and address potential impacts to sensitive species that are not otherwise protected by the Act, MBTA, or Eagle Act.

Should you have any questions regarding this matter, please contact Jenny Marek of our staff at (805) 644-1766, extensions 325.

Sincerely,



Jeff Phillips
Deputy Assistant Field Supervisor

cc:
Mary Meyer, California Department of Fish and Wildlife

**LISTED SPECIES WHICH MAY OCCUR
AT THE SANTA SUSANA FIELD LAB,
VENTURA COUNTY, CALIFORNIA**

Plants

Braunton's milk-vetch	<i>Astragalus brauntonii</i>	E, CH
Lyon's pentachaeta	<i>Pentachaeta lyonii</i>	E
Spreading navarretia	<i>Navarretia fossalis</i>	T
Conejo dudleya	<i>Dudleya abramsii</i> ssp. <i>parva</i> [<i>Dudleya parva</i>]	T
Santa Monica Mountains dudleya	<i>Dudleya cymosa</i> ssp. <i>ovatifolia</i> [inclusive of <i>Dudleya cymosa</i> ssp. <i>agourensis</i>]	T
Marcescent dudleya	<i>Dudleya cymosa</i> ssp. <i>marcescens</i>	T
San Fernando Valley spineflower	<i>Chorizanthe parryi</i> var. <i>fernandina</i>	C
California Orcutt grass	<i>Orcuttia californica</i>	E

Birds

Coastal California gnatcatcher	<i>Polioptila californica californica</i>	T
Least Bell's vireo	<i>Vireo bellii pusillus</i>	E
California condor	<i>Gymnogyps californianus</i>	E

Amphibians

California red-legged frog	<i>Rana draytonii</i>	T, CH
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Invertebrates

Quino checkerspot butterfly	<i>Euphydryas editha quino</i>	E
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	T
Riverside fairy shrimp	<i>Streptocephalus woottoni</i>	E

Key:

- E – Endangered
- T – Threatened
- C – Candidate
- CH – Critical Habitat