San Diego River Conservancy

1350 Front Street, Suite 3024, San Diego, California 92101
(619) 645-3183• Fax (619)238-7068

September 9, 2008

Wayne Donaldson
State Historic Preservation Officer
California Department of Parks and Recreation
Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001

Dear Mr. Donaldson:

The San Diego River Conservancy (a State chartered Conservancy under the Resources Agency) is initiating an invasive non-native plant control program on the San Diego River Watershed in Southern San Diego County. This program will operate under the Army Corps of Engineers' Regional General Permit #41. A condition of this permit is to inquire about the presence or absence of listed and/or eligible sites in the Natural History Register within the proposed work area that may be affected by the proposed project.

The project will treat and reduce biomass of invasive non-native plants in the San Diego River Watershed. The project will not entail use of mechanized equipment to carryout excavation, grading, construction or disturbance of rock formations, soil surfaces, or stream/river banks and no damage to structures will occur. Given the project's activities and location (in the river which naturally experiences flooding and soil movement) it is unlikely any historical artifacts would be harmed or exposed. Equipment will only be used to reduce above ground non-native vegetation.

A record search for the project area is a component of the program and the invasive plant control methods have minimization and avoidance measures incorporated in them

Arnold Schwarzenegger *Governor* **Mike Chrisman** *Secretary, Resources Agency* **Donna Frye** *Chair, Councilmember City of San Diego*

J

To protect cultural resources If you require further information regarding this project, please contact me.

Sincerely,

Michael Nelson
Executive Officer
(619) 645-3183

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-SD-2008B0219/2008TA0213

DEC 21 2007

Michael Nelson, Executive Director
San Diego River Conservancy
1350 Front Street-Suite 3024
San Diego, California 92101

Re: Invasive Plant Control and Re-vegetation Project for the San Diego River Watershed, San Diego County, California

Dear Mr. Nelson:

This letter is in response to a December 16, 2007, letter from Jason Giessow, your representative, requesting our concurrence, pursuant to section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), that the proposed Invasive Plant Control and Re-vegetation Project (project) for the San Diego River Watershed may affect, but is not likely to adversely affect the federally-listed endangered least Bell's vireo (*Vireo bellii pusillus*; vireo) and the federally-listed threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher).

Based on the information provided and the proposed avoidance/minimization measures listed in the attachment, the Service concurs that the proposed project may affect, but will not likely adversely affect the vireo and gnatcatcher. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

If you have any questions regarding this letter, please contact Michelle Moreno of my staff at (760) 431-9440.

Sincerely,

Therese O'Rourke
Assistant Field Supervisor

Attachment

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Attachment

Project Description and Avoidance and Mitigation Measures

The proposed project would occur within the entire San Diego River Watershed, San Diego County, California (Figures 1 and 2). The project consists of a watershed based invasive non-native plant control and re-vegetation program with an emphasis on *Arundo*, pampas grass and palms (other species may be controlled if observed). The program will start at the El Capitan Dam and will work downstream. The bulk of control and re-vegetation activities will occur between September 15 and March 15 each year. Some maintenance activities (i.e., watering of plantings and weed control) may occur outside this time frame, but only in areas that have no suitable vegetation for avian nesting. The typical treatment cycle will start with foliar application of glyphosphate herbicide in the fall. Work will begin September 15 and usually end by early December. Once the *Arundo* cane has died, biomass reduction may occur, particularly where stands are thick and large (over 1/8 acres). Biomass reduction will occur from mid-January up to March 15 in riparian areas and February 15 in coastal sage scrub. Biomass reduction will entail either mowing or hand cutting the dead *Arundo* cane/pampas grass. The normal biomass reduction process is: 1) a large mower mows stands, 2) hand crews cut all *Arundo* that mowers could not reduce, 3) a smaller mower mows hand cut *Arundo*. Some sites that do not have mowing access may be cut by hand and chipped. Mowing will be carried out using a fixed tooth or hammer flail mowing attachment mounted on a tractor. The mowing attachment mulches the dead (or live) *Arundo* cane into a layer about 4" thick (thickness varies at site from ½" to 10"). The mowing attachment and tractor do not dig into the soil surface or change topography of the site. All tractors are rubber tired. Several sizes of tractors are used: from a larger 45,000 lb tractor with four large tires (about 56" by 18") with a mowing implement 100" wide to a smaller size 8,000 lb tractor with two large (48" x 16") and two small tires (24" x 12") with a mowing implement 74" wide. Live or dead *Arundo* stands are mowed standing and piles of dead *Arundo* stacked by hand crews are mowed. Based on a search of all available species databases vireo and gnatcatcher are known to occur within the project area.

The following measures are proposed to be implemented to avoid and minimize potential effects to federally listed species:

1. No more then three crews will be active on the watershed at one time

2. Only one crew will operate at a given site at a time (sites are separated by at least one mile- and are usually on entirely different reaches of the watershed).

3. Crew size will not exceed 16 individuals and no more than five people will be working together at a given spot.

4. Each crew may use up to 2 ATVs (typically one is used to move both the power sprayer and mixed herbicide to crews in the field). Small gas powered power sprayers (with 50

gallon tank for mixed herbicide) are moved throughout the site to carryout treatments. A small tractor (<8,000 lb) may be used instead of ATVs.

5. ATVs will not drive in channel areas.

6. ATVs will operate only in open areas. Woody vegetation (>1" DBH) will not be cleared or driven upon.

7. Site preparation will be carried out prior to treatment of *Arundo*. Preparation will entail separating, or creating a space, between stands of *Arundo* and native vegetation. This allows the *Arundo* to be treated without affecting the naive woody vegetation. The space between *Arundo* and native vegetation will be created by pushing, detangling and/or trimming the vegetation. Both *Arundo* and native woody vegetation may be trimmed. However, woody vegetation may not be trimmed that is in excess of four inches in diameter.

8. Herbicide mixing and refueling will occur only at staging areas, which are located along roads or on degraded areas with no native vegetation. Compacted dirt lots, road shoulders, and old disturbed sites are typically the type of areas that are used for staging.

9. All regulations involving use of herbicides will be followed including BMPs. Aquatic herbicide formulations will be used when near open water.

10. A marking dye will be used to assure that drift or overspray onto non-target vegetation is not occurring.

11. Biomass reduction will occur from mid-January up to March 15 (February 15th in CSS), but most work will be completed by late February to allow for replanting.

12. No native vegetation will be mowed.

13. No mowing will occur in the stream channel.

14. No mulched/mowed biomass will be placed in the channel.

15. All mowed material will be placed over previously existing stands of *Arundo*, no open habitat or native vegetation will be covered with *Arundo* mulch.

16. Hand-cutting crews will cut dead *Arundo* using chainsaws operated by hand. Hand tools (loppers and machetes) may be used, but in limited situations.

17. Chippers may be used at sites where mowing is not possible due to site topography. Typically this is on tributaries where creeks have deep profiles. Chippers will be staged

on roads and may chip material onto disturbed/maintained areas outside the creek profile, chip into areas where *Arundo* previously existed, or chip into containers for hauling off site.

18. During re-vegetation activities no more than two crews will be active on the watershed at one time.

19. During re-vegetation activities crew size will not exceed 12 individuals.

20. During re-vegetation activities each crew may use up to 2 ATV's to move plants from staging areas to planting locations. ATV's typically drive only in areas that have been mowed (on dead *Arundo* mulch). Some sites that are flat and connected to roads, may allow use of a 4 wheel drive truck to access mowed areas and deliver plants.

21. Between March 15 and September 15, the following restrictions will apply:

    a. no areas will be worked in that have vegetation structure suitable for nesting (work only in mowed areas with new plantings).

    b. no powered equipment will be used at the restoration sites (only watering and treatments with backpacks). The water truck does have a gas powered pump, but this will operate along access roads or in staging areas.

    c. avian monitors will be used as requested.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011

In Reply Refer To:
FWS-SDG-08B0219-09I0092

NOV 18 2008

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NOV 18 2008

REGULATORY BRANCH
SAN DIEGO OFFICE

Therese O'Rourke
Chief, San Diego Section
U.S. Army Corps of Engineers, Los Angeles District
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Attention: Michelle Lee Mattson (File No. 2008-201079-MLM)

Subject: Invasive Plant Control and Re-vegetation Project for the San Diego River Watershed, San Diego County, California

Dear Ms. O'Rourke:

This letter is in response to your letter, dated October 30, 2008, requesting our concurrence, pursuant to section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), that the proposed Invasive Plant Control and Re-vegetation Project (project) for the San Diego River Watershed may affect, but is not likely to adversely affect the federally-listed endangered least Bell's vireo (*Vireo bellii pusillus*; vireo) and the federally-listed threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher).

The proposed project would occur within the entire San Diego River Watershed, San Diego County, California (Figures 1 and 2). The project consists of a watershed based invasive non-native plant control and re-vegetation program with an emphasis on *Arundo*, pampas grass and palms (other species may be controlled if observed). The program will start at the El Capitan Dam and will work downstream. The bulk of control and re-vegetation activities will occur between September 15 and March 15 each year. Some maintenance activities (i.e., watering of plantings and weed control) may occur outside this time frame, but only in areas that have no suitable vegetation for avian nesting.

The typical restoration process will begin with biomass reduction. Biomass reduction may take place between September 15 and March 15. Biomass reduction will entail either mowing or hand cutting the dead *Arundo* cane/pampas grass. The normal biomass reduction process is: 1) a large mower mows stands, 2) hand crews cut all *Arundo* that mowers could not reduce, 3) a smaller mower mows hand cut *Arundo*. Some sites that do not have mowing access may be cut by hand and chipped. Mowing will be carried out using a fixed tooth or hammer flail mowing attachment mounted on a tractor. The mowing attachment mulches the dead (or live) *Arundo* cane into a layer about 4" thick (thickness varies at site from ½" to 10"). The mowing

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attachment and tractor do not dig into the soil surface or change topography of the site. All tractors are rubber tired. Several sizes of tractors are used: from a larger 45,000 lb tractor with four large tires (about 56" by 18") with a mowing implement 100" wide to a smaller size 8,000 lb tractor with two large (48" x 16") and two small tires (24" x 12") with a mowing implement 74" wide. Live or dead *Arundo* stands are mowed standing and piles of dead *Arundo* stacked by hand crews are mowed. Arundo re-sprouts would be treated with a foliar application of glyphosphate and/or imazypyr herbicide formulations approved by the Environmental Protection Agency for use in riparian areas. Only target non-native plants are treated.

Based on a search of all available species databases vireo and gnatcatcher are known to occur within the project area.

The following measures are proposed to be implemented to avoid and minimize potential effects to federally listed species:

1. No more then three crews will be active on the watershed at one time

2. Only one crew will operate at a given site at a time (sites are separated by at least one mile- and are usually on entirely different reaches of the watershed).

3. Crew size will not exceed 16 individuals and no more than five people will be working together at a given spot.

4. Each crew may use up to 2 ATVs (typically one is used to move both the power sprayer and mixed herbicide to crews in the field). Small gas powered power sprayers (with 50 gallon tank for mixed herbicide) are moved throughout the site to carryout treatments. A small tractor (<8,000 lb) may be used instead of ATVs.

5. ATVs will not drive in channel areas.

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8. Herbicide mixing and refueling will occur only at staging areas, which are located along roads or on degraded areas with no native vegetation. Compacted dirt lots, road shoulders, and old disturbed sites are typically the type of areas that are used for staging.

9. All regulations involving use of herbicides will be followed including BMPs. Aquatic herbicide formulations will be used when near open water.

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b. no powered equipment will be used at the restoration sites (only watering and treatments with backpacks). The water truck does have a gas powered pump, but this will operate along access roads or in staging areas.

c. avian monitors will be used as requested.

Based on the information provided above and the proposed avoidance/minimization measures, the Service concurs that the proposed project may affect, but will not likely adversely affect the vireo and gnatcatcher. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

If you have any questions regarding this letter, please contact Michelle Moreno of my staff at (760) 431-9440.

Sincerely,

for Karen A. Goebel
Assistant Field Supervisor

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

District Office: Los Angeles District | File/ORM #: 2008-01079-MLM | PJD Date: January 27, 2012

State: CA | City/County: San Diego/San Diego

Nearest Waterbody: San Diego River watershed

Location: TRS, LatLong or UTM: Approximate center of project area/Mission Valley 32.780605 -117.106227

Name/ Address of Person Requesting PJD: Michael Nelson, San Diego River Conservancy, 1350 Front Street, Suite 3024, San Diego, California 92101

Identify (Estimate) Amount of Waters in the Review Area:

Non-Wetland Waters: linear ft | width | acres | Stream Flow: Perennial

Wetlands: 354 acre(s) | Cowardin Class: Riverine

Name of Any Water Bodies on the Site Identified as Section 10 Waters: Tidal: | Non-Tidal:

☑ Office (Desk) Determination
☐ Field Determination: | Date of Field Trip:

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☑ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: January 27, 2012 Application
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
  - ☐ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite quad name:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:
- ☑ Photographs: ☑ Aerial (Name & Date): Google Earth
  - ☑ Other (Name & Date): Application, January 28, 2012
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager (REQUIRED)

Signature and Date of Person Requesting Preliminary JD (REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

District Office	Los Angeles District	File/ORM #	2008-01079-MLM	PJD Date:	January 27, 2012
State	CA	City/County	San Diego/San Diego	Person Requestinq PJD	Michael Nelson

Site Number	Latitude	Longitude	Cowardin Class	Est. Amount of Aquatic Resource in Review Area	Class of Aquatic Resource
1	32.780605	-117.106227	Riverine	354	Non-Section 10 wetland

Notes:

This Preliminary JD is to cover the non-native species cover throughout the San Diego River watershed. The percent cover was estimated by the San Diego River Conservancy using aerial interpretation, mapping in GIS, and field reconnaissance.

DEPARTMENT OF THE ARMY
Los Angeles District, Corps of Engineers
San Diego Section, Carlsbad Field Office
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

January 27, 2012

REPLY TO THE ATTENTION OF:
Office of the Chief
Regulatory Division

Michael Nelson
San Diego River Conservancy
1350 Front Street, Suite 3024
San Diego, California 92101

Dear Mr. Nelson,

This is in reply to your electronic mail request dated March 14, 2011 to reissue authorization SPL-2008-01079-MLM, for a Department of the Army Permit to discharge fill onto waters of the U.S., through implementing a non-native plant control and riparian restoration program throughout the San Diego River watershed. Based on the information you have provided, the Corps of Engineers has determined that your proposed activity complies with the terms and conditions of Regional General Permit (RGP) No. 41 (Enclosure 1). Thus, an individual permit is not required as long as you comply with the general permit conditions of RGP No. 41 including notifying other regulatory agencies and paying all required fees. You must also comply with the measures in the USFWS Letter of Concurrence (Enclosure 2). RGP No. 41 is scheduled to expire on January 22, 2014 unless it is reissued by the Los Angeles District. Therefore, this authorization will expire on January 22, 2014. If RGP No. 41 is reissued work is anticipated to continue beyond this time, please notify the Corps and USFWS several months in advance for a renewal.

Specifically, you are authorized to:

1. Reduce biomass of Arundo (*Arundo donax*), salt cedar (*Tamarix* spp.), Pampas grass (*Cortaderia selloana*), and other invasive species between September 15 and March 15 of each year per USFWS avoidance and minimization measure No. 11.
2. Broadcast foliar application of herbicides approved by the U.S. Environmental Protection Agency (USEPA) for close proximity to wetlands and other waters

between September 15 and March 15 of each year.

3. Plant-specific application of USEPA approved herbicides for close proximity to wetland and other waters using a backpack sprayer and/or the cut/paint technique may be used throughout the year.
4. Conduct other maintenance and restoration activities including planting, hand weeding or debris removal, and watering throughout the year in areas that has no suitable vegetation for avian nesting.

You must comply with the following non-discretionary Special Conditions:

1. Pre-Construction Notification:

Prior to commencing work you must submit written notification to the Corps via e-mail or letter that includes a map of the location(s) where work is anticipated to occur, the methods that will be used in each general location (biomass reduction and/or herbicide application), and the anticipated work schedule. The Corps will review the notification and respond with a written Notice to Proceed within 15 days. If after 15 days you do not hear from the Corps, you may proceed with work as long as all the remaining conditions of this permit and that of the USFWS Letter of Concurrence (see Special Condition No. 2, below) are met.

2. Endangered Species Act:

This permit does not authorize you to take any threatened or endangered species, in particular the least Bell's vireo (*Vireo bellii pusillus*) or the coastal California gnatcatcher (*Polioptila californica californica*) or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed USFWS Letter of Concurrence (FWS-SDG-08B0219-09I0092; Enclosure 2) contains mandatory measures to avoid and minimize potential effects to federally listed species to a level of "may effect, but not likely to adversely affect" the vireo and gnatcatcher. Your authorization under this Corps permit is conditional upon your compliance with all of these measures. Failure to comply with the measures associated with the Letter of Concurrence and where incidental take occurs would constitute an unauthorized take, and it would constitute non-compliance with your Corps permit.

3. Cultural Resources:

Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861). The Permittee shall immediately suspend all work in any area where potential cultural resources are discovered. The Permittee shall not resume

construction in the area surrounding the potential cultural resource until the Corps re-authorizes the project, per 36 C.F.R. Section 800.13.

4. Annual Reporting:

Submit annual progress reports no later than October 1st of each year that include a summary of the activities conducted the previous fiscal year, the approximate acreage of non-native plant species treated, a map or aerial photograph with approximate polygons of treated areas, and a list of other restoration actions completed. Also include an estimate of the areas that will be treated and other restoration activities planned for the current fiscal year. Please always note File No. SPL-2008-01079-MLM in each report.

A general permit does not grant any property rights or exclusive privileges. You must obtain legal access to all properties where work is proposed. Also, it does not authorize any injury to the property or rights of others or authorize interference with any existing or proposed federal project. Furthermore, it does not obviate the need to obtain other federal, State, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact me at 760.602.4835 or via e-mail at Michelle.L.Mattson@usace.army.mil.

Sincerely,

Michelle Lee Mattson

Michelle Lee Mattson
Senior Project Manager
South Coast Branch, Regulatory Division

Enclosure 1: RGP 41
Enclosure 2: USFWS Informal Consultation Letter