



Animal and Plant
Health Inspection
Service

Wildlife Services

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VIA EMAIL

July 29, 2019

Collete L. Adkins
Center for Biological Diversity
8640 Coral Sea Street NE
Minneapolis, MN 55449

Ms. Adkins,

This letter is in response to your May 30, 2019 Notice of Intent to Sue (NOI) under Section 11(g) of the Endangered Species Act (ESA) (16 U.S.C. 1540(g)), in which you allege that the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (APHIS-WS) is in violation of the ESA. Specifically, you allege that APHIS-WS is violating Section 7 of the ESA (16 U.S.C. 1536) and the ESA's consultation regulations (50 C.F.R. Part 402) by (1) failing to ensure that its beaver damage management activities in California are not likely to jeopardize the continued existence of listed fish and wildlife; (2) failing to initiate, reinstate and/or complete consultation regarding the impacts of its beaver damage management activities in California on listed fish and wildlife; and (3) continued authorization and approval of activities that may irreversibly and irretrievably commit resources and may foreclose the formulation or implementation of reasonable and prudent alternatives prior to completing consultation regarding the impacts of its beaver damage management activities in California on listed fish and wildlife.

Although your NOI ostensibly refers to wildlife damage management activities more generally on page two, the remainder of your NOI focuses exclusively on beaver damage management activities. For this reason, we assume your only concerns with respect to ESA compliance are related to APHIS-WS' beaver damage management activities in California and our response will only address those concerns. On page 10 of your NOI, you list 10 salmonid species under the purview of the National Marine Fisheries Services (NMFS) and three additional species – Oregon spotted frog, Southwestern willow flycatcher, and tidewater goby – under the purview of the U.S. Fish and Wildlife Service (USFWS) that you allege may be affected by APHIS-WS' beaver damage management activities in California.

With respect to the allegations related to consulting with NMFS on the 10 salmonid species listed in your NOI, you will be pleased to know that APHIS-WS in California has initiated consultation under Section 7 of the ESA (15 U.S.C. 1536) with NMFS on its aquatic mammal damage management activities, which include beaver damage management activities. Enclosed with this letter is a copy of the consultation request letter, along with the attached project description, and the response letter from NMFS.



APHIS-WS in California has already had multiple productive conversations and other communications with NMFS and is taking steps to ensure that its activities are in compliance with Section 7(d) of the ESA (15 U.S.C. 1536(d)) during the pendency of the consultation. Enclosed with this letter is a copy of the memorandum that we have prepared to demonstrate our compliance with Section 7(d) while we are consulting with NMFS. We believe that these actions resolve the concerns expressed in your NOI with respect to the allegations related to consulting with NMFS.

With respect to the allegations related to consulting with USFWS, APHIS-WS in California is in the process of evaluating whether its current beaver damage management activities have any effects on the Oregon spotted frog, tidewater goby and the Southwestern willow flycatcher. While APHIS-WS in California is in the process of completing this evaluation, and out of an abundance of caution, it will cease any beaver damage management activities in the critical habitats of the tidewater goby and the Southwestern willow flycatcher. Currently, USFWS has not designated any critical habitat for the Oregon spotted frog in California. However, USFWS has noted that the only county in California with historical observations of the Oregon spotted frog is Siskiyou county. Out of an abundance of caution, APHIS-WS in California will cease any beaver damage management activities in Siskiyou county while it is completing its evaluation. Once our evaluation is complete, we will provide you with a follow-up response.

APHIS-WS takes its ESA obligations, as well as public input, very seriously. I see that you have stated that your client, the Center for Biological Diversity (CBD), is contemplating filing a lawsuit. I hope that this letter will convince you otherwise. If you or CBD has any additional concerns, I would be happy to engage in further discussions.

Sincerely,

Dennis Orthmeyer
State Director

Enclosures