

From: Rick York
To: Tonya Moore
CC: Misa Ward
Date: 2/4/2008 1:41 PM
Subject: Re: VV2 Project -- VVWRA 2005 2081 Permit
Attachments: VV2 -CompensationRatio Ltr_020108.doc

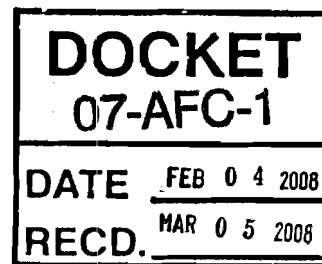
We agree with you, Tonya. Further field work would be a waste of time and money.

Not sure if you saw/received the attached letter from Mr. Egan that he filed, on behalf of the applicant(?), regarding the applicant's proposal to use the 1:1 DT and MGS compensation ratio. Misa will use this letter and work closely with you to finalize her analysis/testimony to justify the 3:1 compensation ratio if that is what the Department has determined to be appropriate for the Victorville 2 project.

Misa is currently out of the office, but she will return Friday, Feb. 8th. Let me know if you have any comments or questions. I do not have Denyce's e-mail address, so please forward Mr. Egan's letter to her if you think she will be interested in it. Thanks.

Rick

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>>> "Tonya Moore" <tmmore@dfg.ca.gov> 2/4/2008 12:37 PM >>>
 Howdy Tom,

Actually, the Department (in this area) does not allow re-surveying of areas with positive MGS finds. Once the site has a positive find it must obtain a Incidental Take Permit.

I have never had a situation like this one where an adjacent site has found MGS and then the site next to it wants to survey for negative results. It could be argued that your site already has a positive find. No reasonable person would assume that a MGS found feet from the border of your site couldn't be on or using your site. I don't think that I could say with the information that I have that this site is not occupied MGS habitat.

Although, I have stated that the area could be re-surveyed do to non-positive results, it would seem that is not true anymore. This site should not be re-surveyed because it would not change the result that MGS presence has been positively identified.

>>> <STREAMNUT@aol.com> 1/28/2008 11:40 AM >>>
 Well that would be contrary to earlier statements made by the Department relative to the VV2 Project and substantially different than direction commonly given individuals in the High Desert. It would certainly also have major bearing on the issues at hand.

Tom Egan

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In a message dated 1/28/2008 11:33:29 A.M. Pacific Standard Time, Mward@energy.state.ca.us writes:

I read Tonya's email to mean that there is already enough evidence to establish presence. Therefore, trapping is no longer an option. That is, if 2008 trapping did not find any individuals, there would still be potential for take due to the presence of the population next door and the species' ability to move on to the site.

N. Misa Ward, Senior Biologist
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>>> "Kimberly McCormick" <kimberly.mccormick@comcast.net> 1/28/2008 10:06 AM
>>>

If we trap in 2008 and find nothing, then MGS are presumed not to be there for 12 months following the last trapping survey and we would be able to move forward without a 2081 permit for MGS. The clearance would only be good for one year, so any construction that occurred outside the 1-year period could result in an unauthorized take of MGS if they are present and a take occurs.

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From: STREAMNUT@aol.com [<mailto:STREAMNUT@aol.com>]
Sent: Monday, January 28, 2008 9:41 AM
To: tmmoore@dfg.ca.gov; kimberly.mccormick@comcast.net
Cc: Dracine@dfg.ca.gov; Mward@energy.state.ca.us; Ray_Bransfield@fws.gov
Subject: Re: VV2 Project -- VVWRA 2005 2081 Permit

Am I correct in assuming the applicant (City of Victorville) still has the ability to conduct trapping surveys in 2008 according to CDFG guidelines/protocol to determine MGS presence in the VV2 Project area? Or would the Department still require CESA Section 2081 permitting and habitat compensation for MGS where trapping according to CDFG-approved protocol throughout the Project area results in no detection of the species?

Tom Egan

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In a message dated 1/28/2008 9:35:22 A.M. Pacific Standard Time, tmmoore@dfq.ca.gov writes:

Howdy Kim,

Yes, we have discussed this particular permit a couple of times. As I have stated, I do not know the reasoning as to why the biologist in this case decided to use a 1:1 ratio of MGS and did not require desert tortoise coverage for this permit even though the majority of permits issued prior to this one did have at least a 3:1 ratio for MGS and desert tortoise. I can only speculate that it was human error. What I do know is that the information on MGS in the area has changed since this permit was issued.

In 2005, a female MGS was trapped on Colusa Road and in 2007, a young male MGS was trapped adjacent to this project site. I believe that this information, coupled with the past 10 years of data, although limited, has established the presence of a MGS population. Since a thriving population has been established where it was not known to occur previously, all new permits and impacts within this area must reflect the new scientific information. Hence, why the Department has determined a 3:1 ratio is required for this project in order to fully mitigate for MGS and desert tortoise impacts.

>>> "Kimberly McCormick" <kimberly.mccormick@comcast.net> 01/25/08 9:05 AM
>>>

Tonya, attached is an executed copy of the 2005 CDFG Section 2081 permit issued for the VVWRA expansion, requiring mitigation acreage for MGS at a 1:1 ratio. The permit specifically states that the acquisition of 35 acres, to compensate for disturbance of 35 acres of MGS habitat and the take of MGS

on the VVWRA site, "is based upon the Department's estimate of the acreage required to provide for adequate biological carrying capacity at a replacement location as a means of fully mitigating the Project's impacts on the Covered Species." (pg. 7).

Because the VVWRA is located next door to the VV2 project, and has habitat that is the same as or even more valuable than the habitat on the VV2 project site, this 2005 VVWRA permit provided the VV2 Project with an additional reasonable basis for applying a 1:1 mitigation ratio for MGS for the VV2 Project. Kim

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