

**SACRAMENTO RIVER
CONSERVATION AREA FORUM**

Programmatic Safe Harbor Agreement

October 30, 2013

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SACRAMENTO RIVER CONSERVATION AREA FORUM PROGRAMMATIC SAFE HARBOR AGREEMENT

1. INTRODUCTION

This programmatic Safe Harbor Agreement (Agreement) is entered into between the Sacramento River Conservation Area Forum (the Forum) and the U.S. Fish and Wildlife Service (Service); hereinafter collectively called the “Parties”. The purposes of this Agreement are to provide a net conservation benefit to the federally-threatened Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and giant garter snake (*Thamnophis gigas*) (Covered Species) and assure non-federal, participating landowners (Cooperators) that no additional regulatory burdens, fines or penalties will result from management activities designed to benefit federally-listed species within privately-owned properties in Butte, Glenn, Colusa, Shasta, Yolo, Sutter, and Tehama Counties, California.

This Agreement follows the Service’s Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), which implement this policy. Upon approval, this Agreement will serve as the basis for the Service to issue an Enhancement of Survival Permit (Permit) under Section 10(a)(1)(A) of the Endangered Species Act (ESA). The Federal permit authorizes the incidental taking of the Covered Species during habitat restoration activities, as well as activities associated with routine and ongoing agriculture production. Additionally, the permit authorizes incidental take of Covered Species if a Cooperator chooses to return their property to Baseline conditions (See Section 5, Baseline Determination).

Under this Agreement, the Program Administrator (i.e., the Forum) and a Cooperator will sign a Cooperative Agreement (see Attachment 1), in which Cooperators agree to carry out habitat improvements described in their Cooperative Agreement and to abide by the terms and conditions set forth in this Agreement. The Program Administrator will then issue a Certificate of Inclusion to the Cooperator. Certificates of Inclusion issued by the Forum will extend incidental take coverage to the Cooperator’s property (Enrolled Property). Once the Cooperator implements the provisions of the Cooperative Agreement, the Cooperator is authorized to incidentally take Covered Species or modify habitat to return the Enrolled Property to Baseline conditions.

2. COVERED SPECIES

Each Cooperative Agreement will list the Covered Species for each property based on the particular activities that will be implemented by the Cooperator. Specific determinations for which species will be covered under each Cooperative Agreement will be determined by the Service on a case by case basis and will depend on the type of habitat present and the restoration activities that will be implemented by the Cooperator.

Table 1: List of Covered Species and Federal Status.

Species Name	Federal Status
Valley elderberry longhorn beetle (<i>Desmocerus californicus dimorphus</i>)	Threatened
Giant garter snake (<i>Thamnophis gigas</i>)	Threatened

3. RESPONSIBILITIES OF THE PROGRAM ADMINISTRATOR, COOPERATORS, AND THE SERVICE

Program Administrator

The Forum is the Program Administrator. The Program Administrator has the following responsibilities:

1. Be the recipient of the Federal 10(a)(1)(A) Enhancement of Survival Permit for this Agreement.
2. Enter into Cooperative Agreements with private landowners and issuing Certificates of Inclusion.
3. Ensure that baseline habitat surveys have been conducted by qualified individuals. A qualified person is someone with species expertise that has been approved by the Parties.
4. Ensure that the Service has approved each individual Cooperative Agreement prior to enrolling the Cooperator.
5. Furnish the Service with copies of all Cooperative Agreements within 2 weeks after they are signed.
6. Compile annual reports from Cooperators and summarize the information in an annual report to the Service. The report is due by March 31 of each year. The record keeping process will document implementation of the program's management practices while protecting the confidentiality of Cooperators.
7. Notify the Service of any living individuals or dead specimens of the Covered Species of which it becomes aware on the Enrolled Properties.
8. Inform the Service if a Cooperator chooses to undergo an activity that will reduce the number of Covered Species or associated habitat on the Enrolled Property. This notification is for the sole purpose of allowing an opportunity to relocate Covered Species from the property.
9. Ensure compliance of the terms of the Cooperative Agreement.

Cooperators

Cooperators are landowners and/or land managers who voluntarily enter into a Cooperative Agreement with the Program Administrator to carry out habitat restoration activities that benefit the Covered Species. Each Cooperator has the following responsibilities:

1. Enroll their property by entering into a Cooperative Agreement with the Program Administrator.
2. Ensure that a qualified individual completes a Baseline Habitat Worksheet (Attachment 4).
3. Carry out specific restoration, enhancement, and management activities as detailed in the Cooperative Agreement.
4. Complete an annual report that is provided to the Program Administrator by December 31 of each year.
5. Notify the Program Administrator 30 days prior to any planned activity that the Cooperator reasonably anticipates will result in “take” of the Covered Species on the Enrolled Property, and provide the Service or other mutually agreed-upon entity access and opportunity to relocate any affected individuals of the Covered Species, if appropriate.
6. In some instances, a Cooperator may be a land manager that does not own the Enrolled Property (e.g., a rancher who is leasing the Enrolled Property). In such cases, Cooperators must demonstrate to the Program Administrator that they have the authority to enter into such agreements.

The Service

The Service has the following responsibilities:

1. Upon execution of the Agreement, the Service will issue to the Program Administrator a permit in accordance with Section 10(a)(1)(A) of the ESA.
2. Provide technical assistance to the Program Administrator and Cooperators, to the maximum extent practicable, when requested; and provide information on federal funding programs.

3. Review all Cooperative Agreements that are proposed for federally-listed species prior to signing by the Program Administrator. Approval will be provided by the Service to the Program Administrator in writing.
4. Review annual reports provided by the Program Administrator.

4. DESCRIPTION OF ENROLLED PROPERTIES

Properties potentially eligible for enrollment under this Agreement are within the area shown in the attached map (Figure 1) and consist of those non-federal lands in, or adjacent to, the SRCA in the counties of Shasta, Tehama, Butte, Glenn, Colusa, Yolo, and Sutter, California. The general habitat types included in this area are riparian forest, grassland, oak and elderberry savannah, and oxbows. The Enrolled Properties are to be more precisely indicated on maps attached to the Cooperative Agreements. Current and recent land use practices on potential Enrolled Properties are likely to be varied and to include orchards, other agricultural uses, and ranching.

5. BASELINE DETERMINATION

Baseline on the Enrolled Properties will be established by completing the Baseline Habitat Worksheet (Attachment 4). This worksheet will be completed by a Qualified Person prior to signing the Cooperative Agreement. A "Qualified Person" is someone with species expertise who has been approved by the Parties. The Baseline conditions will be established not more than 18 months prior to the signing of the Cooperative Agreement. When the Service does not directly determine the Baseline Conditions, they must review and concur with the determination before approving an Agreement, and, if necessary, conduct a site visit.

Where possible to estimate Baseline Conditions based on recent aerial photos, or on monitoring and modeling of elderberry bushes or habitat in the area, such an estimate may be used in lieu of the survey of the Enrolled Property, provided that the Service, the Program Administrator, and the Cooperator concur.

6. MANAGEMENT ACTIVITIES

This section provides information on agricultural or ranching activities, as well as beneficial activities associated with riparian restoration or enhancement that may be covered under individual Cooperative Agreements. Each Cooperative Agreement shall specify the restoration activities to be carried out on the Enrolled Property and a timetable for implementing those activities. The Service anticipates that implementation of the beneficial activities described below will produce a net conservation benefit for the Covered Species by increasing habitat available to Covered Species for the term of the Cooperative Agreements.

Beneficial Activities

Because of the wide array of possible restoration and/or enhancement activities available to a Cooperator, it is not possible to list them all in this section. A summary of some possible management activities that may benefit the Covered Species is provided below. This list is not exhaustive, but serves as general guidance for the type of beneficial management activities that the Service anticipates Cooperators to implement under the Cooperative Agreements. The Service does not anticipate that Cooperators will implement all of the management activities listed below for a given Covered Species, but rather choose activities from the following list that are feasible, or implement other beneficial activities not listed below.

Valley Elderberry Longhorn Beetle

Habitat loss is the primary threat to this species (Service 1980). Beneficial activities, such as those described below, will result in the establishment of habitat for the valley elderberry longhorn beetle. Additionally, Cooperators may agree to allow research to be conducted on Enrolled Properties to obtain additional information on the species. These beneficial activities support recovery objectives specified in the *Recovery Plan for the Valley Elderberry Longhorn Beetle* (Service 1984) by restoring habitat sites within the presumed historical range of the species and managing and protecting this habitat for long enough to result in a net conservation benefit.

1. Plant and maintain elderberry bushes and associated riparian plants. Providing connectivity between areas with elderberry shrubs is optimal.
2. Manage vegetation around the elderberry plants, including removal of non-native invasive species (e.g., Himalayan blackberry) as appropriate to facilitate restoration.
3. Allow for recruitment of elderberry shrubs within riparian areas.
4. Create riparian habitat that promotes sustainable elderberry shrub savannahs.
5. Ensure that applications of pesticides or herbicides do not impact the species by utilizing sufficient buffer distances and safe application methods; provided, however, that responsibility for this management action shall apply only to a Cooperator and shall not be required of landowners and operators on adjacent properties who are not subject to a Cooperative Agreement.

Unless subsequently modified pursuant to Section 10.A. of this Agreement, this Agreement shall not authorize in excess of: (1) the removal or transplanting of 3,000 elderberry shrubs over the 30-year duration of this Agreement as a result of returning to Baseline conditions; (2) the removal or transplanting of an additional 100 elderberry shrubs per year as a result of routine agriculture activities and minor flood management activities over the 30-year duration of the Agreement; and (3) damage to or removal of 100 elderberry shrubs per year for the purposes of conservation actions (e.g., habitat

management as appropriate to facilitate restoration) over the 30-year duration of the Agreement.

Giant Garter Snake

Habitat loss due to agriculture, development, and flood control activities is the primary threat to this species. Other threats include ongoing maintenance of aquatic habitats for flood control and agricultural purposes (Service 1999). Beneficial activities, such as those described below, will result in the restoration and/or enhancement of potential giant garter snake habitat, which can encourage colonization of giant garter snakes. Other beneficial activities may improve connectivity between fragmented areas of suitable habitat. Additionally, Cooperators may agree to allow research to be conducted on Enrolled Properties to obtain additional information on the species. This Agreement supports recovery objectives specified in the *Draft Recovery Plan for the Giant Garter Snake* (Service 1999) by restoring habitat sites within the presumed historical range and managing for optimal habitat conditions.

1. Increase the interconnectivity of suitable wetlands and waterways (e.g., canals and ditches) to decrease habitat fragmentation.
2. Eliminate ground squirrel control activities within suitable over-wintering habitat. Small mammal populations create burrows that provide over-wintering habitat and upland refugia during flood events for giant garter snakes.
3. Manage vegetation on banks of irrigation and drainage ditches, sloughs or low gradient streams to sustain appropriate perennial vegetation that provides for: foraging, resting, and basking habitat; and sources for prey items; provided, however, that such management actions shall not adversely impact adjacent landowners' irrigation or drainage patterns.
4. Implement land management activities that benefit the giant garter snake. This could include, but is not limited to, managing livestock grazing to improve habitat for the giant garter snake.

Unless subsequently modified pursuant to Section 10.A. of this Agreement, this Agreement shall not authorize in excess of: (1) the permanent loss of 5,000 acres total of aquatic and upland habitat (including both wetlands and rice created for the snake's benefit) as a result of returning to Baseline conditions during the 30-year duration of the Agreement; (2) the permanent loss of 30 acres total of upland and aquatic habitat as a result of routine agriculture activities, flood management activities, and conservation activities per year during the 30-year duration of the Agreement; and (3) temporary habitat loss (i.e., one season or less) to 30 acres of aquatic or upland habitat per year for the duration of the Agreement.

Routine and Ongoing Agricultural and Ranching Activities

The list of routine agricultural activities provided below is not exhaustive and serves merely to provide guidance to Cooperators as to the type of activities that the Parties anticipate will be covered under this Agreement.

Routine and Ongoing Agricultural Activities: Any practices performed by a farmer or farm as incident to or in conjunction with those farming operations, including production, cultivation, growing, replanting, harvesting, preparation for market, delivery to storage or market, delivery to carriers for transport to market of any agricultural commodity (includes: viticulture, vermiculture, apiculture, horticulture, raising livestock, fish, poultry, etc.). Under no circumstance will this Agreement or Permit authorize take for the conversion of listed-species habitat to non-habitat, unless a property is being returned to Baseline Conditions pursuant to a Cooperative Agreement or a Neighboring Landowner Agreement.

The Forum and the Service recognize that entities involved in flood risk management activities (i.e., the U.S. Army Corps of Engineers, the Central Valley Flood Protection Board, the Department of Water Resources, and levee districts) often have expressed concerns when restoration or enhancement activities are completed within close proximity to flood control structures such as levees, weirs, bypasses, drains, and gates. Many of the flood risk management agencies are concerned that habitat enhancement and restoration projects could result in an increase of listed species' habitat on adjacent flood control structures, making it more costly to complete necessary repair and maintenance activities. It is the goal of the Parties to accomplish conservation activities for listed species without negatively affecting routine flood risk management activities. Therefore, this Agreement may provide incidental take coverage for minor flood risk management activities on Enrolled Properties or neighboring properties (see Section 7, Neighboring Landowner Agreements) if it is determined by the Service that it is appropriate to cover the activity per the Service's Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706). Examples of minor flood risk management activities that will be considered for coverage include but are not limited to: trimming or transplanting elderberry shrubs, mowing vegetation on levees, and debris removal.

7. NEIGHBORING LANDOWNER AGREEMENTS

Neighboring non-federal landowners who own property within the program area that abuts or is within the immediate vicinity of an Enrolled Property may secure incidental take without committing to undertake any management activities described in Section 6 of this Agreement. The neighboring landowner must enter into a "Neighboring Landowner Agreement" with the Program Administrator (see Attachment 3). The neighboring landowner agrees to allow a qualified individual to complete the Baseline Habitat Worksheet for the Covered Species (see Attachment 4). If a Cooperator chooses to terminate a Cooperative Agreement, the neighboring landowners who have entered into Neighboring Landowner Agreements will continue to have assurances under this Agreement. The Neighboring Landowner Agreement will remain in effect for the

remainder of the duration specified in the Cooperative Agreement, but may be extended on a case by case basis by the Service.

Where possible to estimate Baseline Conditions based on recent aerial photos, surveys undertaken from public roadways, adjacent lands, or other similar locations, the Program Administrator may, with the concurrence of the Service, propose a Baseline on this basis. The neighboring landowner may either accept the proposed Baseline or have a survey taken to establish more precise Baseline Conditions at his own expense.

8. AGREEMENT AND PERMIT DURATION

The Agreement becomes effective upon issuance of the Enhancement of Survival Permit by the Service, which will be in effect for 30 years. Cooperative Agreements developed pursuant to this Agreement will be for a term that is long enough to result in a net conservation benefit. This Agreement and the federal permit may be extended by mutual consent of the Parties.

9. ASSURANCES REGARDING TAKE OF COVERED SPECIES

Provided that the Baseline Conditions identified for the Enrolled Property are maintained, the Enhancement of Survival Permit authorizes the Program Administrator to issue Certificates of Inclusions to Cooperators, which authorize Cooperators to take the Covered Species incidental to otherwise lawful activities in the following circumstances:

1. Implementing the beneficial activities identified in Section 6 of this Agreement.
2. Conducting routine and ongoing ranching and/or agricultural activities on the Enrolled Property after the beneficial activities identified in Section 6 of this Agreement have been initiated.
3. Returning the Enrolled Property to Baseline Conditions.

10. MODIFICATION AND TERMINATION

A. Modification of the Agreement. Any party may propose amendments to this Agreement, as provided in 50 C.F.R. §13.23, by providing written notice to, and obtaining the written concurrence of, the other Parties. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. If applicable, both the landowner and land manager must sign the notice. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the Parties' written concurrence.

B. Termination of the Agreement. As provided for in Part 12 of the Service's Safe Harbor Policy (64 Fed. Reg. 32717), a Cooperator may terminate his/her Cooperative Agreement by

giving written notice to the Program Administrator. In such circumstances, the Cooperator may return the Enrolled Property to Baseline Conditions, without penalties or disincentives for withdrawing participation, even if the management activities identified in this Agreement have not been fully implemented, provided they notify the Program Administrator prior to undertaking an activity that will cause take of the Covered Species.

C. Permit Suspension or Revocation. The Service may suspend or revoke the permit/approval for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. As provided in 50 C.F.R. 13.28(a), 50 C.F.R. §§17.22(c)(7), and 17.32(c)(7), the Service may also, after pursuing all appropriate options to avoid permit revocation, revoke the permit if continuation of permitted activities would likely jeopardize the continued existence of the Covered Species under its jurisdiction, or adversely modify those Covered Species' designated critical habitat. The Program Administrator or any Cooperator may object to any suspension or revocation of its Enhancement of Survival Permit or Cooperative Agreement pursuant to 50 C.F.R. §§ 13.27(b), and 13.28(b).

D. Baseline Adjustment. The Baseline Conditions for any Enrolled Property may, by mutual agreement of the Parties and the Cooperator, be adjusted if, during the term of the Cooperative Agreement and for reasons beyond the control of the Cooperator or as an unintended result of properly-implemented beneficial activities, the baseline habitat conditions are reduced from what they were at the time the Cooperative Agreement was negotiated. The Cooperator's Baseline will be adjusted to reflect this by mutual agreement of the Parties.

E. Inability of the Program Administrator to Continue. If the Program Administrator is unable to perform its obligations under this Agreement, it will give written notice to the Service at least 60 days prior to ceasing to perform its obligations under the Agreement. Upon receiving such notice, the Service may, at their discretion, after consultation with Cooperators, either amend this Agreement and the associated permits to substitute a new Program Administrator as provided in 50 C.F.R. 13.25(b), or if a Cooperator prefers, convert any previously approved Cooperative Agreement into an individual Safe Harbor Agreement between the Cooperator and the Service under the same terms.

F. Other Listed Species, Candidate Species, and Species of Concern. In the event that other species in the SRCA, not initially covered by this Agreement, are subsequently listed as threatened or endangered under the ESA, the Parties may consider amending the Agreement to add the newly-listed species as a Covered Species. Previously approved Cooperative Agreements may be amended to include newly-listed species as Covered Species, subject to approval by the Service. The amendment of any Cooperative Agreement to include subsequently listed species will require baseline for the species to be determined in a manner approved by the Service.

11. OTHER MEASURES

A. Remedies. No party will be liable in monetary damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or

any other cause of action arising from this Agreement.

B. Dispute Resolution. The Parties and Cooperators agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all. Modification to the Agreements shall follow the procedures detailed in Section 10.A above. For disputes other than modifications, the Parties and affected Cooperators agree to meet and confer within 30 days of a request by any party. If necessary, the Parties and affected Cooperators agree that a mutually agreed upon arbitrator may be used to solve the dispute.

C. Succession and Transfer. As provided in 50 C.F.R. §13.25(c), if a Cooperator transfers his or her interest in the Enrolled Property to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as the original Cooperator, if the new owner or manager agrees to become a party to the Cooperative Agreement in place of the original Cooperator.

D. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. or state treasuries. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

E. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor will it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

F. Other Laws. This Agreement and activities conducted under it are subject to all applicable federal, state, and local laws and regulations. Nothing contained in this Agreement is intended to limit the authority of the United States to fulfill its enforcement responsibilities under applicable federal or state law.

G. Relationship to Habitat Conservation Plans and Other Conservation Instruments. Nothing in this Agreement affects the right of the Cooperator to seek to record a Conservation Easement on the Enrolled Property or seek to establish the Enrolled Property as a Preserve or Mitigation Bank.

H. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement will be delivered to the persons listed below, as appropriate:

Executive Director
Sacramento River Conservation Area Forum
2440 N. Main Street
Red Bluff, California 96080

Safe Harbor Program Coordinator
U.S. Fish and Wildlife Service
2800 Cottage Way, room W-2605
Sacramento, California 95825

I. Confidentiality.

All information generated by this Agreement, or by individual Cooperative Agreements and Neighboring Landowner Agreements hereunder, which identifies or indicates the existence of endangered, threatened or otherwise protected species or their habitat on a particular farm or ranch, including but not limited to observations, records, correspondence and communications, shall be confidential to the extent permitted by the Freedom of Information Act, and other applicable laws. This confidentiality shall be assured by the Program Administrator, the Service, and each of their respective agents and employees who obtain such confidential information, to the extent permitted by law. Such confidential information may only be used or shared as necessary for the administration, approval or denial of a local program, or as otherwise required by law.

12. LITERATURE CITED

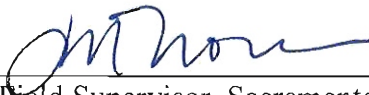
- U.S. Fish and Wildlife Service (Service). 1980. Listing the valley elderberry longhorn beetle as a threatened species with critical habitat. **Federal Register** 45:52803-52807.
- _____. 1984. Valley elderberry longhorn beetle recovery plan. Portland, Oregon. 62 pp.
- _____. 1993. Endangered and threatened wildlife and plants; determination of threatened status for the giant garter snake; final rule. **Federal Register** 58(201):54053-54066.
- _____. 1999. Draft recovery plan for the giant garter snake (*Thamnophis gigas*). U.S. Fish and Wildlife Service, Portland, Oregon. 192 pp.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the Enhancement of Survival Permit.



Executive Director
Sacramento River Conservation Area Forum

Dec 2, 2013
Date



Field Supervisor, Sacramento Field Office
U.S. Fish and Wildlife Service

December 17, 2013
Date

Attachment 1
Cooperative Agreement

This Cooperative Agreement constitutes a written, binding contract between the parties identified in Section 1 below, and recognizes the unique and important role that private landowners in California can play in helping wildlife valued by the people of the state and of the nation. The purpose of the Cooperative Agreement is to enable land management activities beneficial to rare species to be carried out on privately owned land while minimizing the impact of such activities on the right and ability of the owner or manager to use it as he or she wishes. The terms of this Cooperative Agreement are as follows:

1. The Sacramento River Conservation Area Forum ("Program Administrator") and _____ (Cooperator) have entered into this Agreement to improve and manage habitat for the betterment of wildlife, including the Covered Species. The Enrolled Property is delineated on the attached map (Exhibit A).

The Covered Species relevant to this Cooperative Agreement are:

_____ valley elderberry longhorn beetle

_____ giant garter snake

2. The U. S. Fish and Wildlife Service (Service) has issued an Enhancement of Survival Permit to the Program Administrator that authorizes the Cooperator to incidentally take Covered Species during routine and on-going agriculture and ranching activities until the year [20..].

3. The Cooperator agrees to the following:

A. The Cooperator will conduct, or allow to be conducted, activities to improve habitat for the Covered Species on the Enrolled Property. A description of the beneficial activities that the Cooperator proposes to conduct on the Enrolled Property is provided in Exhibit B, including limits on "take" and/or habitat loss for the affected Covered Species. The Cooperator agrees to maintain the improved habitat for a period of 10 years from the date of this Cooperative Agreement. The habitat may be maintained for less than 10 years if the Service determines that a net conservation benefit can be achieved in less time.

B. The Cooperator will allow the Program Administrator (or a qualified individual identified by the Program Administrator) access to the Enrolled Property to determine the Baseline conditions by completing the baseline habitat worksheet (Attachment 4 of the Safe Harbor Agreement).

C. The Cooperator agrees to comply with all of the monitoring components required in the Safe Harbor Agreement. A description of the required monitoring reports follows:

(1) The Cooperator will provide a brief annual report to the Program Administrator. The report will be due annually on December 31 (Exhibit C).

(2) The Program Administrator will collect all of the individual annual reports provided by the Cooperators and summarize the information in an annual report to the Service. A template for this annual report is provided in Attachment 2 of the Safe Harbor Agreement. This annual report is due to the Service on March 31 of each year.

- D. The Cooperator will give the Program Administrator at least 30 days notice of any planned activities that the Cooperator reasonably anticipates will result in incidental take of Covered Species on the Enrolled Property. The Program Administrator will then notify the Service to give them the opportunity to rescue and relocate any Covered Species from the Cooperator's land.
- E. The Cooperator agrees to notify the Program Administrator if the Cooperator decides to sell or transfer ownership or management of the Enrolled Property. The Cooperator also agrees to notify the new landowner of this Cooperative Agreement so that the new owner can become a party to it if he or she wishes.

4. The Program Administrator has issued the attached Certificate of Inclusion to the Cooperator. This Certificate authorizes the Cooperator (or designees) to incidentally take Covered Species during the following activities:

- A. Implementing the beneficial activities identified in Section 6 of this Agreement.
- B. Conducting routine and ongoing ranching and/or agricultural activities on the Enrolled Property after the beneficial activities identified in the Cooperative Agreement have been initiated.
- C. Returning the Enrolled Property to Baseline conditions. No intentional lethal take of Covered Species is anticipated.

5. The Cooperator may terminate the Cooperative Agreement for any reason by giving 60 days written notification to the Program Administrator, in which case the Cooperator's right to incidentally take the species covered under the Certificate of Inclusion will expire. This Cooperative Agreement can be renewed, extended, or modified at any time subject approval of the Cooperator and the Parties.

6. The Cooperator and the Program Administrator agree with respect to liability and indemnification for injuries to persons or property arising out of this Agreement as follows: [details may vary from agreement to agreement]. The Cooperator assumes no liability for injury to any employee or representative of the Program Administrator in the course of any visit to the property under this Agreement. The Program Administrator shall not be liable for any damage to the property of the landowner arising from any visit to the property pursuant to this Agreement.

Program Administrator:

Sacramento River Conservation Area Forum.
2440 Main Street
Red Bluff, CA 96080

Sacramento River Conservation Area Forum

Cooperator

Name _____
Date _____

Name _____
Date _____

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [DESCRIPTION], owned by [NAME OF COOPERATOR], is included within the scope of Safe Harbor Agreement issued by the U.S. Fish and Wildlife Service on [DATE] (Permit No. _____), for a period of 30 years to the Sacramento River Conservation Area Forum (Forum) under the authority of § 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. This permit authorizes certain activities by participating landowners as part of a safe harbor agreement to maintain, restore, and enhance habitat for the Covered Species, while providing incidental take coverage for associated habitat enhancement and routine and ongoing ranching and agricultural activities. Pursuant to the permits and this certificate, the holder of this certificate is authorized to engage in activities on the above described property that may result in the incidental taking of such species, subject only to the terms and conditions of such permit and Cooperative Agreement No. _____ entered into pursuant thereto by the Forum and [NAME OF COOPERATOR] on [DATE].

Sacramento River Conservation Area Forum
Executive Director

Title

Date: _____

_____ valley elderberry longhorn beetle
_____ giant garter snake

All incidental take of the species listed above is subject only to the terms and conditions of the permit and the cooperative agreement entered into pursuant thereto by the Sacramento River Conservation Area Forum (Program Administrator) and [NAME OF COOPERATOR] on [DATE].

Name and Title of Representative of the Sacramento
River Conservation Area Forum (Executive Director)

Date: _____

Exhibit A

[Map of the property subject to the cooperative agreement]

Exhibit B

[Specifications for management actions to be carried out]

Exhibit C - Annual Report from Cooperator to Program Administrator

Please provide information on the following:

County _____ Date _____ Observer(s) _____

Number of acres benefiting from Agreement: _____

Species covered under the Cooperative Agreement (Covered Species):

On a separate piece of paper, briefly describe management and restoration activities that occurred during the past year that would benefit the Covered Species:

- ① Summary of success of the management practices covered to benefit covered species and any recommendations on how to further improve voluntary participation by farmers and ranchers:
- ① In what month and year were the restoration activities substantially complete? _____
- ① Note whether the management and restoration activities differed significantly from the activities described in Exhibit B of your Cooperative Agreement.
- ① Briefly describe other routine agriculture or flood risk management activities that occurred during the past year that occurred within or adjacent to habitat for the Covered Species
- ① Describe the condition of the Covered Species habitat that has been restored/enhanced. This should include all Covered Species habitat in Exhibit A of the Cooperative Agreement. How much habitat is in
 - ① Excellent condition (growing larger and denser, possibly reproducing) _____
 - ① Fair condition (no signs of stress, but little or no growth) _____
 - ① Poor condition (showing signs of stress) _____
- ① Provide a photograph(s) of the Covered Species habitat from pre-established photo-monitoring points. There should be enough photo-monitoring points to adequately cover the restored/enhanced area depicted in Exhibit A of the Cooperative Agreement.
- ① Did non-native grasses or other invasive species spread, degrade or dominate portions of the native plantings, remain about the same, or decrease?
- ① Have you noticed a change in the types or numbers of birds or other wildlife in the restored area? If so, please describe these briefly.
- ① Please describe any “take” of Covered Species or loss of habitat during the reporting period.
- ① Please provide any additional relevant information.

Attachment 2

Annual Report for Safe Harbor Agreement between the U.S. Fish and Wildlife Service and Sacramento River Conservation Area Forum

Permittee's Name: Sacramento River Conservation Area Forum

Permit Tracking Number: TE-192854-0

Location: Sacramento River Conservation Area, Counties of Shasta, Tehama, Butte, Glenn, Sutter, Colusa, and Yolo, California

Agreement Approved by: Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service;

Covered Species:

valley elderberry longhorn beetle

giant garter snake

Report on Enrolled Properties: Provide a comprehensive list of the properties enrolled in the program since its inception including information on location, landowner, acreage, habitat types, a list of enhancement actions completed, status of enrollment, and contact information.

Report on the Monitoring Program (1-2 paragraphs): Describe in general terms the results of any annual reports carried out pursuant to Section 3 of the Safe Harbor Agreement in the year covered by the report; append a copy of the report. Describe any major changes in the habitat included in the baseline or planted as part of the Cooperator's restoration plans. Describe any evidence of utilization of such habitat by the covered species. Summarize any "take" of Covered Species or habitat loss during the reporting term. Append to this report copies of all reports submitted to the Program Administrator by Cooperators since the last annual report.

Date Annual Report is Due: On or before March 31, for the prior calendar year

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer _____

Report on Area wide Management and Conservation Actions (1-2 paragraphs): As necessary to supplement the monitoring reports above, summarize the extent and condition of restored native riparian vegetation on the collective enrolled properties. Describe any apparent year-to-year trends in restoration success in the region. Describe any relevant regional conditions (e.g., drought, flood) that may be required to interpret the management activities described in the appended annual reports from the Cooperators. Finally, please convey any suggestions for adaptive management of restored areas that may have emerged from the program so far.

Attachment 3

Neighboring Landowner Agreement

1. [Owner] owns land (hereafter “the Property”) in XXX County, California, that is designated on the attached map and that is adjacent to land enrolled in the Programmatic Safe Harbor Agreement (Agreement) between the Sacramento River Conservation Area Forum and the United States Fish and Wildlife Service (hereafter “the Service, dated [date]. The Programmatic Safe Harbor Agreement, and the permit issued by the Service, authorizes participating landowners who enter into cooperative agreements to restore riparian habitat on land enrolled in the program to take Covered Species incidental to agriculture production, and other lawful activities on the Enrolled Property, provided that conditions as specified in the Agreement are maintained.
2. The Sacramento River Conservation Area Forum serves as the Program Administrator of the foregoing Programmatic Safe Harbor Agreement, and is authorized by the Agreement to enter into Neighboring Landowner Agreements with landowners who own land adjacent to land enrolled in the Agreement. Neighboring Landowner Agreements confer upon neighboring landowners the same rights to take Covered Species incidental to routine and ongoing agricultural or ranching activities on neighboring land.
3. The Program Administrator and the Service have determined Baseline Conditions on the Property (see Attachment 4, Baseline Habitat Worksheet). So long as conditions specified in the Agreement are maintained [owner] may incidentally take those species in the course of routine and ongoing agricultural or ranching activities on the property. As used herein, “incidental” take refers to the unintentional or unavoidable killing or injuring of Covered Species in the course of carrying out routine and ongoing agricultural or ranching activities.
4. [Owner] agrees to give the Service through the Program Administrator at least 30 days notice (except when precluded by emergency situations) prior to commencing any change in land use likely to reduce the number of Covered Species on the Property, and to allow the Program Administrator or the Service the opportunity to rescue and translocate any individuals of those species from the Property to avoid their loss.
5. This Neighboring Landowner Agreement remains in effect until [date].
6. Nothing herein affects the right of [Owner] to seek to record a Conservation Easement on the Enrolled Property or seek to establish the Enrolled Property as a Preserve or Mitigation Bank.
7. [Owner] may terminate this agreement by giving written notice to the Program Administrator. In such circumstances, [Owner] may return the Enrolled Property to Baseline Conditions, provided he or she gives the Program Administrator 90 days notice prior to the request to terminate the agreement to allow the Program Administrator, the Service, or other mutually agreed-upon entity access and opportunity to the Enrolled Property for the sole purpose of relocating any affected individuals of the Covered Species, if appropriate.

[Owner]

Date

Sacramento River Conservation Area Forum

Date

Attachment 4

Baseline Habitat Worksheet

**Protocol for Determining Baseline Habitat for Landowners
Enrolling in the Sacramento River Conservation Area Forum
Programmatic Safe Harbor**

Note: this form will be turned in with the Cooperative Agreement

Owner's Name _____ Date _____

Evaluator's name _____

Property Name and Location _____

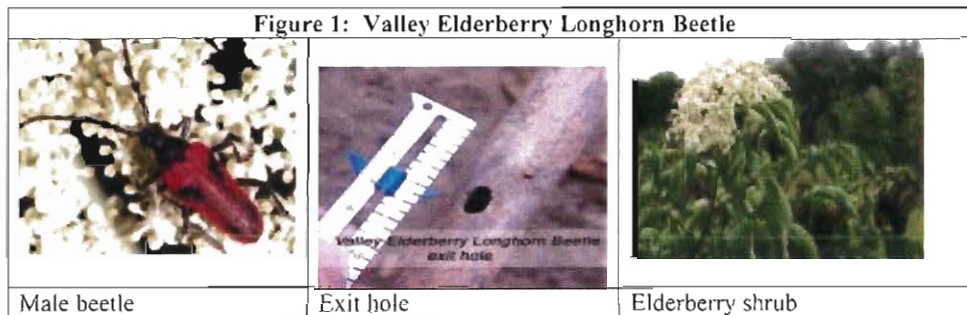
GPS Coordinates _____ Quad Sheet _____

For each Enrolled Property, pre-agreement conditions (baseline) shall be based upon a survey of the Enrolled Property, not more than 18 months prior to signing of the Cooperative Agreement, to delineate the locations of all the habitats for listed species that will be covered under the Cooperative Agreement. When the Service does not directly determine the Baseline Conditions, it must review and concur with the determination before entering into an Agreement, and, if necessary, conduct a site visit.

Valley Elderberry Longhorn Beetle

This beetle is associated with elderberry shrubs (*Sambucus* spp.) in California's Central Valley during its entire life cycle. As the elderberry shrubs begin to flower in the spring, adult beetles emerge from pupation inside the wood. Exit holes made by the emerging adults are distinctive small oval openings. Often these holes are the only clue that the beetles occur in an area. The adults eat the elderberry foliage until about June when they mate and the females lay eggs in crevices in the bark. Upon hatching the larvae tunnel into the tree where they will spend 1-2 years eating the interior wood which is their sole food source. In the Central Valley the elderberry shrub is associated with riparian forests which occur along rivers and streams.

Figure 1 provides photographs of the species and associated habitat.



Baseline will consist of all elderberry shrubs on the enrolled property that are 1.0 inch or greater in diameter at ground level. Please fill out the following information regarding this species:

Please provide **representative photographs** of the suitable habitat for this species that is present on the enrolled property. Photo-points should be established to be utilized for the annual report provided to the Program Administrator.

Provide a **map** of the property that depicts the location of these elderberry shrubs. Of these shrubs, approximately how many have stems that are:

- ① Greater than 1 inch, but less than 5 inches in diameter at ground level _____
- ② 5 inches in diameter or greater at ground level _____

Total number of elderberry shrubs located on the property (include shrubs that are less than one inch in diameter at ground level). _____

Have exit holes been detected on any elderberry shrubs within the enrolled property?
(Yes/No) _____

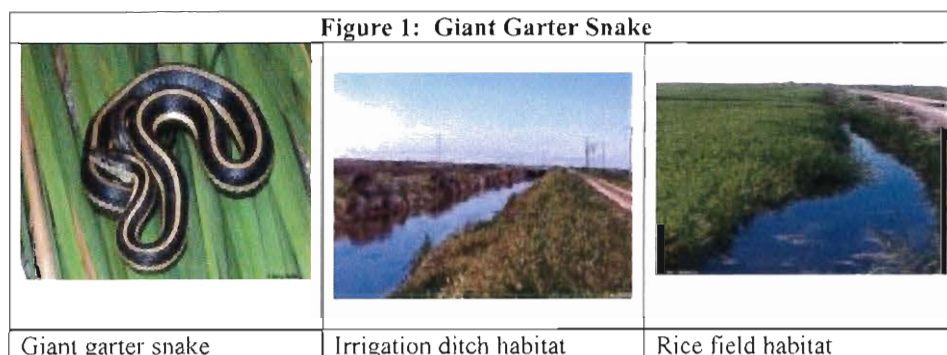
If exit hole have been detected, please provide a photograph of the exit hole(s) and a general description of where the elderberry shrub is located (riparian/upland), other plant species in the vicinity (if known), density of surrounding canopy (i.e. open/dense), the approximate distance to other elderberry shrubs, and whether the shrub contains one or more exit holes.

Provide a brief description of the general management activities within the area around or near the elderberry shrubs, including timing and duration.

Giant Garter Snake

The Giant Garter Snake is highly aquatic and is found in irrigation and drainage canals/ditches, rice fields, marshes, sloughs, ponds, small lakes, and low gradient streams. They are typically absent from wooded riparian areas and large rivers. They are dormant from mid-fall to early spring, and during this dormant period this species will utilize small mammal burrows above prevailing flood elevations.

Figure 1 provides photographs of the species and its associated habitat.



Baseline will consist of total acreage of aquatic habitat and surrounding upland habitat within 200 feet suitable for this species. Please fill out the following information to determine baseline conditions.

Provide **representative photographs** of the aquatic features present within the enrolled property. Photo-points should be established to be utilized for the annual report provided to the Program Administrator.

Provide a **map** that depicts the suitable and non-suitable aquatic features within the enrolled property.

Provide a general description of the types of aquatic habitat present on the enrolled property (i.e. drainage canals, marshes, streams, etc.)

What is the approximate acreage of suitable aquatic habitat within the enrolled property?

What is the approximate acreage of suitable upland over-wintering habitat within the enrolled property (i.e. suitable upland habitat within 200 feet of aquatic features)?

How were the two acreage amounts (baseline) calculated (methods may include GIS, or measurements made on the ground)?

Provide a general description of the hydrology of the aquatic features. Do the features contain water year-round, or only during a portion of the year?

Provide a general description of potential prey species present (i.e. bull frog, tree frog tadpoles, or small fish species) and potential predators (i.e. adult bull frog, egrets, herons, and large fish species).

Provide a general description of the current land management activities within or near the suitable habitat for this species, including timing and duration.

Attachment 5

Administrative Plan to Ensure Compliance of Cooperators

As the permit holder, the Program Administrator has the responsibility to assure compliance by all Cooperators and Neighboring Landowners. The procedure for monitoring Cooperators' compliance and revoking Certificates of Inclusion in the event Cooperators do not comply is set forth below:

The Program Administrator will monitor compliance of Cooperators by occasional site visits and reviewing annual reports turned in by Qualified Persons. In the event of non-compliance on the part of a Cooperator to carry out beneficial activities, implement avoidance and minimization measures, or submit the annual report, the following steps will be taken:

- Within one month of becoming aware that a Cooperator has failed to carry out beneficial activities, implement avoidance and minimization measures, or turn in required paperwork to the Program Administrator, the Program Administrator will contact the Cooperator regarding bringing the Cooperator into compliance.
- If the Cooperator has not complied within three months of initial contact, the Program Administrator will notify the Cooperator in writing regarding their non-compliance and that the process to revoke their Certificate of Inclusion will commence, if they do not come into compliance.
- Within four months of initial contact, the Service will be notified of the lack of compliance by a Cooperator in writing.
- The Service then has the opportunity to notify the Program Administrator what additional measures shall be taken to bring the Cooperator into compliance or if the Cooperator's Certificate of Inclusion shall be revoked, and Agreement will be voided.
- The Service will issue, in writing, the request to revoke the non-compliant Certificate of Inclusion. The Program Administrator shall notify the Cooperator in writing of the revocation of the Certificate of Inclusion and voided Agreement.

The Program Administrator will also monitor compliance with Neighboring Landowner Agreements by annual site visits. In the event of non-compliance on the part of a Neighboring Landowner the Program Administrator will follow the same steps outlined above.