

FINDING OF NO SIGNIFICANT IMPACT

Approval of a Candidate Conservation Agreement with Assurances and associated section 10(a)(1)(A) permits (TE082923-0, TE082922-0, TE034590-0, and TE082920-0) for Threemile Canyon Farms, Portland General Electric, The Nature Conservancy, and the Oregon Department of Fish and Wildlife, in Gilliam and Morrow Counties, Oregon

The Fish and Wildlife Service (Service) proposes to approve a Multi-Species Candidate Conservation Agreement with Assurances (MSCCAA) with Threemile Canyon Farms, LLC, Portland General Electric (PGE), The Nature Conservancy (TNC), and the Oregon Department of Fish and Wildlife (ODFW) (collectively referred to as Permittees). The Service also proposes to issue enhancement of survival permits, under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), to Threemile Canyon Farms, PGE, TNC and ODFW, to address potential incidental take of the Washington ground squirrel (*Spermophilus washingtoni*); ferruginous hawk (*Buteo regalis*); loggerhead shrike (*Lanius ludovicianus gambeli*); and sage sparrow (*Amphispiza belli*) (Covered Species) under the MSCCAA.

The permits would become effective if any of the Covered Species are listed under the ESA during the 25-year permit term. The permits would be conditioned upon the proper implementation of the MSCCAA.

Documents reviewed in the preparation of this Finding of No Significant Impact (FONSI) include:

- the MSCCAA, August 2003;
- the draft environmental assessment (EA) for the Threemile Canyon Farms MSCCAA, August 2003;
- materials provided by David Evans and Associates and Threemile Canyon Farms that identify changes to the MSCCAA in response to comments from the Service, ODFW, and TNC; and,
- our intra-Service section 7 conference biological opinion on the proposed issuance of an incidental take permit to the above listed parties, February 2004.

These documents are incorporated by reference, as described in 40 CFR § 1508.13.

Alternatives Considered

This section provides a description and analysis of the reasonably practicable alternatives available to the Service. Alternatives for the project were developed in accordance with section 10(a) of the ESA and the National Environmental Policy Act of 1969 (NEPA). Two alternatives

to the issuance of permits for the proposed project were analyzed in detail in the draft EA: 1) a no action alternative in which the Service would not issue permits for farm operations and conservation measures within Threemile Canyon Farms, and operations related to operation of the PGE coal-fired power plant at Boardman; and 2) issuance of permits for an alternative that would implement the MSCCAA. Four other alternatives were considered but eliminated from further detailed analysis because they did not meet the purpose and need of the Service's proposed action.. These included: a larger conservation area alternative; a MSCCAA with additional landowners; a MSCCAA without PGE; and, including Department of Defense and Bureau of Land Management (BLM) lands within the MSCCAA.

No Action Alternative

Under the No Action Alternative, the MSCCAA would not be approved and the permits would not be issued. The proposed project would not be fully developed and the objectives of the proposed project would not be met. Some conservation commitments underway would continue without the MSCCAA, including dedication of the Farm's Conservation Area. However, there would not be cohesive conservation within the covered area. PGE would not dedicate 880 acres to long-term conservation. Cooperative fire management, and human and equipment resource sharing would not occur. The farm's agricultural activities and contribution to the local economy would be less certain because of potential future ESA restrictions.

Larger Conservation Area Alternative

This alternative involved converting more of Threemile Canyons Farm's agricultural acres into conservation lands than the 22,600 acres in the proposed project. This alternative would be similar to the proposed project in all but the extent of the set-aside conservation acres and would be located within the project area. Threemile Canyon Farms determined that the loss of any additional existing or potential agricultural lands would cause unacceptable risks to the farm's economic viability.

MSCCAA with Additional Landowners Alternative

This alternative involved the ability to include additional landowners through Certificates of Inclusion to participate in the MSCCAA by making commitments comparable to those described in the MSCCAA. The parties involved in the MSCCAA were not able to estimate what level of interest and what level of participation there might be from other landowners over the next several years.

MSCCAA without the Participation of PGE

This alternative did not include the participation of PGE in the MSCCAA. Threemile Canyon Farms surrounds PGE-owned lands. Without PGE's participation, there would be a gap

composed of at least 880 acres that would not be specifically managed to provide habitat and landscape connectivity beneficial to the Covered Species.

MSCCAA with Inclusion of Department of Defense and BLM Lands

This alternative involved including the nearby Department of Defense's Naval Weapons Training facility and the BLM's Horn Butte property in the MSCCAA. We approached the Naval facility and were advised that they did not wish to participate at this time. The Horn Butte property was determined to be "not ripe" for inclusion due to future management decisions requiring more evaluation by BLM.

Effects and Finding of No Significant Impact

The Service's proposed action is to issue permits to Threemile Canyon Farms, PGE, TNC, and ODFW under section 10(a)(1)(A) of the ESA pursuant to the terms and provisions described in the MSCCAA, and the information contained in the draft EA. The permits would authorize the incidental take in the form of "harm" and "harassment" of the Covered Species over the 25-year term of the permit. The permits would authorize the incidental take of approximately 6.5 Washington ground squirrel active sites due to potential future conversion of the radar range, and 40 sites due to discing in the course of wildfire suppression on Threemile Canyons Farms' property. The permits would authorize the take of two Washington ground squirrels on PGE within their by-product disposal areas. The permits would authorize the take of 19 loggerhead shrike breeding pairs on Threemile Canyon Farms associated with future development, and one nest with up to six nestlings due to wildfire suppression activities. The permits would authorize the incidental take of up to two pairs of loggerhead shrikes associated with PGE's by-product disposal. The permits would authorize the incidental take of five pairs of ferruginous hawks on Threemile Canyon Farms due to habitat loss. Fire control activities resulting in the loss of one nest and up to four nestlings would also be authorized. PGE would be authorized for incidental take of up to one pair of ferruginous hawks associated with their by-product disposal, although there are no documented ferruginous hawk nests on PGE lands. The permits would authorize the incidental take of up to 7 breeding pairs of sage sparrows due to habitat loss and up to 12 nestlings in 3 nests associated with wildfire suppression activities. The effects of incidental take associated with wildfire control would likely be equal or less than the harm to the Covered Species that would occur if nothing was done and wildfires were allowed to continue to burn and expand into additional habitat areas. The authorized take described above would not significantly reduce the populations as a whole given the following: the wide spread distribution of these species within the 22,600-acre Conservation Area, the Agreement provides provisions for habitat management and enhancement within the Conservation Area to address the long-term conservation needs of these species and, the loggerhead shrike, ferruginous hawk and sage sparrow are all wide ranging species occurring throughout the United States.

The proposed action alternative provides long-term, large-scale conservation measures for the Covered Species while addressing the operational needs of the Permittees. Under the proposed

action, a total of 22,600 acres owned by Threemile Canyon Farms has been designated as Farm Conservation Areas. As part of Threemile Canyon Farm's conservation planning and commitments relating to the MSCCAA and the provisions of the sale of the property by the state of Oregon, these areas are subject to a permanent conservation easement held by ODFW. The conservation easement will ensure the permanent protection of the Farm Conservation Areas.

Threemile Canyon Farms will create and maintain a 250-foot buffer zone separating the Farm Conservation Areas from farm activities. There will be no development within the buffer zones; however, vehicle access and emergency fire control and suppression activities will be allowed.

TNC entered into a lease with Threemile Canyon Farms over the Farm Conservation Area as an interim protection measure in January 2001. Under the MSCCAA, Threemile Canyon Farms will fund TNC's management activities within the Farm Conservation Areas up to a maximum of \$130,000 (indexed for inflation) annually. TNC's actual costs will determine the specific level of annual funding and will continue until an endowment is in place to meet annual funding needs. Alternatively, Threemile Canyon Farms is committed to fund up to a maximum of \$2,500,000 (dependent upon the sale price) for the endowment from the proceeds of the sale of the Conservation Areas to TNC or another appropriate third-party transferee for long-term funding security.

Threemile Canyon Farms has first response responsibility for controlling and suppressing wildfire on the Farm Conservation Areas and the undeveloped portions of the Farm. Fire control and suppression measures will benefit most species by protecting large shrub patches, nesting trees, and native grasses, while minimizing the potential for invasion of cheatgrass (*Bromus tectorum*), yellow starthistle (*Centaurea solstitialis*), Russian knapweed (*Acroptilon repens*), diffuse knapweed (*Centaurea diffusa*), medusahead rye (*Taeniatherum caput-medusae*) and other noxious weed species. In addition to being invasive, cheatgrass is highly flammable.

Subject to the terms of the existing grazing lease agreement with a private party that expires at the end of June 2005, Threemile Canyon Farms will not allow grazing on the undeveloped portions of the farm and the Conservation Areas between May 15 and November 1 beginning in 2003. Once the grazing lease on the Conservation Areas is terminated in 2005, grazing will only be allowed if it is shown to have a net positive benefit to the Covered Species. The timing and location of grazing would be tailored to maximize benefits and minimize impacts to the Covered Species.

Under the proposed alternative PGE will designate an 880-acre Conservation Area within its Boardman Plant property boundaries. This area is illustrated in Figure 2 of the MSCCAA. The PGE Conservation Area is adjacent to the Farm Conservation Area and increases the amount of area managed as native habitat for the Covered Species. PGE will develop a management plan for the PGE Conservation Area within the first 6 months of the MSCCAA. The management plan will identify the various specific management actions PGE will implement on their Conservation Area to fulfill the goals and objectives of the MSCCAA which may include

periodic grazing. Much of the PGE Conservation Area is dominated by relatively healthy stands of native grasses, including western needle-and-thread grass (*Hesperostipa comata*), Sandberg's bluegrass (*Poa sandbergii*), and bluebunch wheatgrass (*Pseudoroegneria spicata*). However, non-native cheatgrass is also present. Antelope bitterbrush (*Purshia tridentata*), big sagebrush (*Artemisia tridentata* spp. *tridentata*), and gray rabbitbrush (*Chrysothamnus nauseosus*) occur as scattered populations throughout the area. PGE will actively manage the Conservation Area to maintain and protect the native grassland, but will also promote the establishment, growth, and expansion of bitterbrush and sagebrush in areas where these shrub species would naturally occur. PGE will implement an expanded weed management program to control the establishment and spread of noxious weeds throughout its Boardman Plant property, with an emphasis on the PGE Conservation Area. This management should benefit all Covered Species. A portion of the PGE Conservation Area is downwind of the Plant's coal yard; however, most of the fugitive coal dust deposition occurs within approximately 2,500 feet of the coal yard, with very little reaching the designated PGE Conservation Area.

PGE will implement measures to protect habitats on the PGE Conservation Area from damaging range fires. These measures will be identified by a Boardman Plant Wildfire Management Response Plan (see Appendix J in the MSCCAA). Fire control measures will benefit most species by protecting large shrub patches, nesting trees, and native grasses, while minimizing the potential for invasion of cheatgrass and other noxious plant species.

Portions of the designated by-product disposal area south of Carty Reservoir will be developed incrementally and only as needed, rather than all at once. Landfill sites will be kept to approximately 40 acres in size. Once a landfill has reached its full capacity, it will be decommissioned. This will involve covering the site with at least 24 inches of soil and planting vegetation. When it becomes necessary to decommission a landfill, PGE will meet with the Service, ODFW, and TNC to develop a revegetation plan. If PGE eventually develops the by-product disposal area east of the coal yard, a 250-foot buffer will be maintained between the disposal area and the PGE Conservation Area.

ODFW will assist with conducting surveys for the Covered Species and monitoring their status and distribution within the Threemile Canyon Farms' and PGE's Conservation Areas. They will assist with monitoring reports as necessary. ODFW will also be responsible for managing any hunting that might be allowed on the Conservation Areas provided that hunting activities are not detrimental to the Covered Species or their habitats.

Implementation of the Service's decision would be expected to result in the following environmental effects:

- 1) The conservation measures in the MSCCAA will provide beneficial effects to the four Covered Species and other associated wildlife species through the protection, restoration, and management of native vegetation on a total of 23,480 acres, with 22,600 acres being

set aside for conservation purposes in perpetuity and 880 acres being managed to maintain and/or enhance native vegetation for the 25-year permit term on PGE lands.

2) All known Washington ground squirrel sites, outside of those potentially occurring in the 2,700 acre radar range, would be protected and managed. Up to about 11,773 acres out of 30,078 acres of preferred habitat may be permanently impacted. Fifteen of the known 21 potential ferruginous hawk nest trees would be protected and foraging habitat in the conservation areas would be enhanced. There were only two active nest sites in 2003 and these were located within the permanent conservation area. Impacts to ferruginous hawks would primarily occur in a 1,570-acre future agricultural area on the south portion of Threemile Canyon Farms. Approximately 4,990 acres of loggerhead shrike habitat out of 11,170 acres on Threemile Canyon Farms may be destroyed. The majority of habitat for the loggerhead shrike would be protected, and a greater proportion of the higher quality habitat would be preserved, enhanced, and managed than would be potentially eliminated. For the sage sparrow, about 2,600 acres of habitat would be protected in the conservation areas whereas about 710 acres would be potentially lost in the farm development area, all of which are considered low quality habitat. All of the higher quality sage sparrow habitat would be protected and enhanced in the conservation areas.

3) Prior to any potential for incidental take from habitat modification, the Service will be notified and given an opportunity to relocate individuals, including into the conservation areas. Aside from the Washington ground squirrel, habitat modification is only likely to take place when the species are not present.

4) Incidental take of the Covered Species authorized by the permit would result in some adverse effects to the species. These impacts to the Covered Species would be mitigated by the up-front habitat protection and enhancement measures. The impacts would also be mitigated through long-term management of 23,480 contiguous acres.

5) Wildfire firefighting activities such as discing may result in the loss of habitat or loss of immature individuals in nests. However, the habitat affected by firefighting activities would likely be lost as a result of incineration from the wildfire if it is not controlled. Additionally, wildfire control should reduce the spread of fire and reduce the net amount of habitat lost.

6) There would be some indirect beneficial effects to other native wildlife species, as identified in the EA from the maintenance and restoration of native habitats and implementation of the MSCCAA.

The effects to the Covered Species from the No Action Alternative would be less positive than the proposed action. Since current land-use activities are expected to continue under the No Action Alternative, many of the threats to the Covered Species would also continue, particularly

those related to habitat degradation due to invasion of non-native plants and wildfires. Under the No Action Alternative, there would be no assurances of integrated conservation measures and fire management being implemented on Threemile Canyon Farm and PGE lands. Also, there would not be the same level of human and equipment resource sharing for species and habitat management. There would not be the dedication by PGE of an 880-acre conservation area. Vegetation management and any allowable grazing would not focus on all of the Covered Species. Without the MSCCAA there would be no means for state and Federal resource agency, or public input regarding management of the area within Threemile Canyon Farms.

Cumulative positive effects from this project on the Covered Species could occur on nearby lands as conservation measures are implemented by other landowners who may enter into similar agreements in the future. The MSCCAA could also serve as a foundation for potential management of native vegetation and wildlife on adjacent and nearby lands. The MSCCAA may serve as an example to other landowners of a cooperative relationship that addresses operational needs as well as native habitat conservation measures. The MSCCAA includes intensive habitat restoration within a large area that may be used by others attempting to address weed control and native vegetation planting and management. The coordinated fire control within Threemile Canyon Farms may prevent wildfire from spreading onto adjacent lands and negatively impacting native vegetation and wildlife. Effects from other landowners implementing similar conservation measures would be positive. We expect that, if similar conservation measures are implemented on properties throughout the range of the Covered Species, the listing of the Covered Species under the ESA should be precluded. Positive cumulative effects may result from increased population levels of the Covered Species in response to more and better quality habitat, and curtailment of the negative impacts of wildfire that can be long-lasting and difficult to reverse.

Measures to mitigate and/or minimize adverse effects to the Covered Species from land use activities have been incorporated into the proposal. These include conservation measures to benefit the Covered Species and their habitats over the 93,000 acres of Threemile Canyon Farms and PGE's Boardman Plant property under the proposed action. Regulatory certainty would be provided to Threemile Canyon Farms and PGE as incentives to conserve the Covered Species and to cooperate with the wildlife agencies in conservation efforts. Conservation of the Covered Species would be enhanced under the proposed action compared to the No Action alternative.

The permit application to the Service, including the MSCCAA, satisfies the permit issuance criteria and qualifies for a permit (Service 2004b).

The proposed action is not expected to have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988.

Factors affecting resources other than those that are biological will not differ substantially from those under the No Action Alternative; therefore, there are no effects to these resources from implementing the proposed action. Differences in effects to air quality, geology and soils,

recreation and water quality and quantity would be minor or negligible, due to the minor land use changes that would occur under the proposed action that may affect these resources. Some minor changes in recreation may occur as a result of restrictions on public hunting opportunities and rules under the proposed action; however, effects to recreation would be negligible due to the minor restrictions on a relatively small number of people. Socio-economic resources should not be affected significantly, since no social or economic changes are expected to result from the proposed action. The socio-economic contributions of Threemile Canyon Farms and PGE would potentially be more certain to continue under the proposed action with the assurances provided under the MSCCAA should any of the Covered Species be listed. Dedication of the Farm Conservation Areas would limit and may eliminate this area from future grazing, which may have a small but insignificant impact on the local economy. Potential impacts to any cultural or historic sites found in the area would be avoided or minimized through consultation with the State Historic Preservation Office prior to any ground disturbance within previously undisturbed areas. The Oregon Trail route through the area has been previously marked and will be protected. Visual resources are expected to remain similar with or without implementation of the proposed action.

The proposed action should not interfere with achieving environmental justice. The proposed action would not cause any residents or businesses to be displaced or relocated. No significant or adverse environmental effects from the proposed action are anticipated on minority populations, low-income populations, or Tribes. The added security provided under the MSCCAA for any potential listings of any of the Covered Species would allow Threemile Canyon Farms and PGE to continue to operate and continue to provide employment to minority workers.

The proposed action is similar to actions that do not normally require preparation of an Environmental Impact Statement and is not without precedent.

Public Involvement

A notice of intent to prepare an environmental document pursuant to NEPA was published in the Federal Register on January 14, 2002 (see 67 *FR* 1781). Two responses were received. One response requested a copy of the MSCCAA. The other response mentioned setting aside a portion of land for the curlew (*Numenius americanus*) and that curlews are not as common as they once were. The MSCCAA contains large conservation areas being set aside and managed to maintain and restore native vegetation and wildlife. The area being set aside is among the largest known to exist in the Columbia basin. The commenter also mentioned concern about the feeding and caring of cattle and the disposal of manure. Dairy operations and grazing are addressed in the MSCCAA and EA.

The final proposal has been thoroughly coordinated with all interested and/or affected parties. A notice of availability of the Threemile Canyon Farms MSCCAA and draft environmental assessment was published in the Federal Register on August 27, 2003 (see 68 *FR* 51589). Public

comments on the permit applications, the proposed MSCCAA, and the draft environmental assessment were requested by October 14, 2003. Three comment letters and 857 electronic mails were received. All of the electronic mails were similar and supported the position of the letter from the United Farm Workers of America. The Service's response to these letters is included as an attachment to this Finding of No Significant Impact (FONSI), and is incorporated herein by reference.

The Agreement will be implemented immediately upon signing of the FONSI and issuance of the permits by the Service.

Determination

In summary, as documented in the EA and conference opinion, issuance of enhancement of survival permits, under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, is not expected to result in significant impacts to the physical and biological resources on Threemile Canyon Farms' property, in PGE areas, or in the surrounding area. The issuance of the enhancement of survival permits and implementation of the MSCCAA would not result in significant effects on the human environment.

Therefore, it is my determination that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. As such, an environmental impact statement is not required. An EA has been prepared in support of this finding. The EA and the FONSI are available upon request at the Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266, telephone (503) 231-6179.


Deputy Regional Director
Region 1, FWS

3/1/04
Date

References

Fish and Wildlife Service. 2004a. Environmental Assessment and Finding of No Significant Impact for the Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances. Portland, Oregon. February, 2004.

Fish and Wildlife Service. 2004b. Findings and Recommendations for the Issuance of section 10(a)(1)(A) Enhancement of Survival Permits Associated with the Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances (Permit Numbers: (TE082923-0,TE082922-0,TE034590-0, and TE082920-0). February, 2004. 23 pp.

Fish and Wildlife Service. 2004c. Intra-Service Section 7 Conference Opinion on the Proposed Issuance of a Section 10(a)(1)(A) Enhancement of Survival Permit for the Threemile Canyon Farms Multi-Species Candidate Conservation Agreement with Assurances. Portland, Oregon. February, 2004. 54 pp.

Threemile Canyon Farms, The Nature Conservancy, Fish and Wildlife Service, Oregon Department of Fish and Wildlife, Portland General Electric. 2003. Multi-Species Candidate Conservation Agreement with Assurances. March 1, 2004.

ATTACHMENT

Threemile Canyon Farms MSCCAA/EA Responses to Public Comments

1. Letter from Shirley Rugg

Comment: Mrs. Rugg describes her cattle operation and its benefits to the environment, and suggests that this method of grazing be allowed to continue.

Response: Threemile Canyon Farms manages the current grazing lease with Mrs. Rugg over the Farm and the Farm Conservation Areas. This lease continues until June 30, 2005. The lease will not be extended past 2005 on the Conservation Areas. Grazing is a Covered Activity on the Farm's Development and Conservation Areas, as well as the PGE property, under the MSCCAA. The future development of sound grazing practices on the Farm Conservation Areas will be discussed between the managers of the Farm, TNC, Service, and Mrs. Rugg. Once the grazing lease on the Conservation Areas is terminated, however, grazing will only be allowed if it is shown to have a net positive benefit to the Covered Species. ***No modifications to the MSCCAA or EA are required*** as a response to this comment.

2. Letter from Carla McLane, Morrow County Planning Director

A. Comment: "The first concern is future development of the 'Boardman-Cecil Road' that is discussed in the text of Land Partition LP-N-308 and is dedicated on Partition Plat 2002-6. It needs to be clear that the actions of this MSCCAA can not interfere with the County's ability to construct that road at some future date." The County requests language be inserted in the MSCCAA that confirms there will be no impact to this Road.

Response: Based upon the map illustrating the location of the "Boardman-Cecil Road", this proposed road remains a significant distance from the Conservation Areas and their buffer and does not intercept any of these areas. ***No modifications to the MSCCAA or EA are required*** as a response to this comment.

B. Comment: "Also dedicated on Partition Plat 2002-6 is an emergency access easement to allow access from or to the south of the property off Immigrant Lane. However, as late as this summer, emergency staff in the Heppner area were unaware of the access easement or its location."

Response: The emergency access easement dedicated on Partition Plat 2002-006 is not for access off Immigrant Lane to or through the South Conservation Area. A condition of approval for the plat required the Farm to dedicate an emergency access easement from the

“Boardman-Cecil Road” to the northern boundary of the Conservation Area. The plat note, which governs the easement, provides:

"The 40.00 foot emergency access easement is a perpetual, non-exclusive private access easement for the benefit of Parcel 1 (Conservation Area), and may be used for emergency purposes only by the owners of Parcel 1 and authorized emergency service personnel, and for no other use."

This easement is not for general emergency use through, over or across the Conservation Area; however, ***this easement will be identified in the Wildfire Response Plan*** that will be provided to the Morrow County Emergency Management Department (see response to C., below). ***No modifications to the MSCCAA or EA are appropriate or required*** as a response to this comment.

C. Comment: "Conditional Use Request CUP-N-197 includes Condition of Approval #6 which states, 'As Emergency Response Plans are formulated or updated Threemile Canyon Farms will provide copies of such plans to the following agencies: Boardman Fire Protection District, Morrow County Sheriff's Office, and the Morrow County Emergency Management Department'."

Response: Currently, the MSCCAA states that TNC will update the Wildfire Response Plan annually and inform the Farm, PGE, the Navy, neighboring landowners, and the Boardman and Ione Fire Departments (Section 7.2.1.1.4). ***The MSCCAA will be updated*** to indicate that the Farm will provide copies of the Plan to the Boardman Fire Protection District, Morrow County Sheriff's Office, and the Morrow County Emergency Management Department (7.1.1.1.6).

3. Letter from the United Farm Workers of America, AFL-CIO

A. Comment: "There is no evidence that the proposed buffer will separate the species of concern from threatening activities."

Response: The buffer zone is intended to minimize disturbance to the Covered Species and their habitats by creating a vegetated buffer between the Farm Development Area and the Farm Conservation Areas. The 250-foot buffer was established around the Farm Conservation Areas to further restrict land use activities that otherwise could affect the outer edges of these areas. There will be no development within the buffer zones; however, vehicle access and emergency fire control and suppression activities are allowed. Weed control will occur in the buffer zone to minimize the spread of noxious weeds or other unwanted, non-native plant species. The primary benefits of the buffer zone include minimizing edge effects and potential disturbances to the Farm Conservation Areas. The buffer is not intended to prevent all impacts to the Covered Species or to prevent them from entering the agricultural sections of the Farm. Nor is the buffer intended as a measure for take avoidance like the Oregon survival guidelines. Recognizing that there may be impacts to Covered Species as a result of the limited activities allowed within the buffer zone, the Farm will document all activities that may impact the Covered Species within

the 250-foot buffer zone in the annual report to the Service. The potential effects of these activities on the Covered Species or their habitats will also be discussed within that report. As a result, ***no modifications to the MSCCAA or EA are appropriate*** as a response to this comment.

B. Comment: "The applicants fail to provide adequate information that allows for evaluation of the impacts of pesticides."

Response: The MSCCAA is not required to address pesticides. The MSCCAA is required to address the potential impacts of those activities that are covered under the Agreement. The use of chemicals, such as pesticides and herbicides, are not covered activities under the MSCCAA. Under a long-standing policy, the Service has chosen to not cover pesticides within the Agreement due to the term of the Agreement (25 years) in comparison to the rapidly changing technologies associated with pesticides. Moreover, the U.S. Environmental Protection Agency is the responsible federal agency for ensuring the registration and use of chemicals comply with the provisions of the ESA. As a result, ***no modifications to the MSCCAA or EA are required***.

C. Comment: The comments refer to species-specific impacts from pesticides.

Response: The Service and all other signatories to the Agreement do not dispute that impacts to vegetation and wildlife can result from the use of pesticides; however, as stated above, the application of pesticides is not a Covered Activity under the MSCCAA. Because the MSCCAA is required to address the potential impacts of those activities that are specifically covered under the Agreement, it is not required to address pesticides. Therefore, ***no modifications to the MSCCAA or EA are required***.

D. Comment: Comments suggest an inadequate evaluation of pesticide effects.

Response: See responses to B. and C. above.

E. Comment: Comments raise the issue of other toxins that may be associated with Carty Reservoir.

Response: Carty Reservoir provides plant equipment cooling, process water makeup, and storage for agricultural irrigation water for Threemile Canyon Farms. Additionally, low-level processed Boardman Plant wastewater is returned to the reservoir. The reservoir also provides resting, feeding, and nesting areas for waterfowl and shorebirds, and drinking water for wildlife. Because of these uses, the reservoir is classified as an industrial waste pond and is regulated by Oregon Department of Environmental Quality (ODEQ) under the Plant's Water Pollution Control Facility permit and the Boardman Plant Site Certificate. This permit establishes the levels of required treatment and acceptable effluent criteria for the intended uses of the reservoir water. Samples are collected monthly to verify compliance with maximum contaminant levels established in the permit and results are reported to ODEQ in the Boardman Plant Annual Ecological Monitoring Report. The reservoir is considered safe for irrigation application

according to ODEQ regulations and is not considered harmful. ***No modifications to the MSCCAA or EA are needed.***

F. Comment: "The applicants fail to establish that the habitats set aside will 1) be sufficient to ensure the survival of the listed species, and 2) the surviving inhabitants will be of a sufficient number to ensure the survival of the species on this location."

Response: The Candidate Conservation Agreement with Assurances (CCAA) Policy is intended to facilitate the conservation of proposed and candidate species, and species that may become candidates, by giving non-Federal property owners incentives to implement conservation measures for declining or at-risk species. Before entering into a CCAA the Service must determine that "the benefits of the conservation measures, *when combined with the benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties*, would be expected to preclude or remove any need to list the Covered Species". The Boardman Area MSCCAA alone is not required to ensure the survival of the Covered Species; however, if similarly situated properties implemented the conservation measures contained within the MSCCAA, then the cumulative conservation benefits should likely preclude or remove the need to list the species. Therefore, ***this Agreement meets the CCAA standard and no revision is required.***

G. Comment: The comments suggest an inadequate offering and analysis of alternatives to Covered Activities that could result in the take of the Covered Species.

Response: The MSCCAA and accompanying enhancement of survival permit are not required to contain or consider alternative actions that could result in the incidental take of Covered Species. Under Section 10(a)(2)(A)(iii), Habitat Conservation Plans (HCPs) accompanying incidental take permits issued under section 10(a)(1)(B) are required to specify "what alternative actions to such [incidental] taking the applicant considered and the reasons why such alternatives are not being utilized." An enhancement of survival permit is issued under section 10(a)(1)(A), and the requirements for Habitat Conservation Plans and section 10(a)(1)(B) permits do not apply. ***No revisions to the MSCCAA or EA are appropriate or required.***

H. Comment: The comments raise concern over the areas surveyed for the Covered Species.

Response: In conducting their review of this Agreement under the Endangered Species Act, the Service must use the "best scientific and commercial data available" (16 USC 1536[a][2]). Suitable habitat for the Covered Species was identified based on the results of wildlife surveys conducted to date and the correlation of species presence to specific environmental or vegetative characteristics reported in the literature. The suitable habitat maps and population estimates were then developed through a collaborative effort between the Service, Threemile Canyon Farms, PGE and ODFW biologists that have a significant amount of experience with the Covered Species within the Covered Area. Using this methodology, the Agreement provides the Service with the best scientific data available. ***No changes are required to the MSCCAA or EA.***

I. Comment: The comments suggest the Environmental Assessment does not provide adequate information regarding job security of the Farm's employees, nor does it account for the employees' potential exposure to pesticides.

Response: The guarantee of private employment is not within the required scope of the MSCCAA. By voluntarily implementing the conservation measures discussed in the Agreement, however, the Farm and the other Signatories are minimizing the chances that these species will be federally listed. The federal listing of any of the Covered Species could impact future Farm operations, which could result in eliminating jobs at the Farm. Therefore, through the Agreement, the Farm is minimizing the chances that jobs will be negatively impacted. ***No revisions to the MSCCAA or EA are appropriate or required.***

In response to the suggested pesticide issues, please see responses to Comments B. and C. ***No revisions to the MSCCAA or EA are appropriate or required.***

4. The 857 electronic-mail letters (e-mails) submitted by supporters of the United Farm Workers of America (UFWA)

Comment: The 857 e-mails are form letters that support and re-iterate the comments submitted by the UFWA.

Response: Please refer to the responses to Comments A-H above. ***No revisions to the MSCCAA or EA are required.***