

**BEFORE THE UNITED STATES DEPARTMENT
OF THE INTERIOR & THE UNITED STATES
FISH AND WILDLIFE SERVICE**

In the Matter of Reclamation District)
No. 108, *et al.*'s Petition to Delist the)
Valley Elderberry Longhorn Beetle)
Under the Endangered Species Act)

**PETITION OF RECLAMATION DISTRICT NO. 108,
RECLAMATION DISTRICT NO. 784, RECLAMATION
DISTRICT NO. 1500, LEVEE DISTRICT ONE, SACRAMENTO
RIVER WEST SIDE LEVEE DISTRICT, KNIGHTS LANDING
RIDGE DRAINAGE DISTRICT, CALIFORNIA CENTRAL
VALLEY FLOOD CONTROL ASSOCIATION, NORTH
SACRAMENTO LAND COMPANY, SACRAMENTO
VALLEY LANDOWNERS ASSOCIATION, BUTTE COUNTY
FARM BUREAU, FRESNO COUNTY FARM BUREAU,
SACRAMENTO COUNTY FARM BUREAU, SOLANO COUNTY
FARM BUREAU, AND YOLO COUNTY FARM BUREAU TO
DELIST THE VALLEY ELDERBERRY LONGHORN
BEETLE UNDER THE ENDANGERED SPECIES ACT**

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INTRODUCTION

In September, 2006, the United States Fish and Wildlife Service (Service) completed a 5-year status review for the valley elderberry longhorn beetle (VELB) and recommended that the VELB be removed from the list of threatened species under the Endangered Species Act. *See* U.S. Fish and Wildlife Service, Valley Elderberry Longhorn Beetle (*Desmocerus californicus dimorphus*), 5-Year Review: Summary and Evaluation at 20 (Sept. 2006) (5-Year Review) (attached as Exhibit 1). *See also* 72 Fed. Reg. 7064, 7067 (Feb. 14, 2007). This agency recommended delisting “[b]ased upon the number of sightings throughout the Central Valley and the reduction of . . . threats” to the VELB and concluded that the VELB had recovered from its status as a threatened species. 5-Year Review at 19-20.

Four years later, however, the VELB remains listed as a federally protected species with a corresponding critical habitat designation. *See* 45 Fed. Reg. 52,803 (Aug. 8, 1980). The VELB’s status as a threatened species and its critical habitat designation create significant costs for people and businesses throughout California’s Central Valley. These costs include expensive mitigation measures for those activities which affect VELB habitat, lost commercial development opportunities, and impediments to critical flood and irrigation control projects.

In order to have this agency effectuate its 5-Year Review of the VELB and prevent future regulatory burdens due to unnecessary federal protection of this species, Petitioners Reclamation District No. 108, Reclamation District No. 784, Reclamation District No. 1500, Levee District One, Sacramento River West Side Levee District, Knights Landing Ridge Drainage District, California Central Valley Flood Control Association, North Sacramento Land Company, Sacramento Valley Landowners Association, Butte County Farm Bureau, Fresno County Farm Bureau, Sacramento County Farm Bureau, Solano County Farm Bureau, and Yolo County Farm Bureau (collectively,

“Petitioners”) hereby petition the United States Department of the Interior and the Service to remove the VELB from the list of threatened species. This petition is made pursuant to 16 U.S.C. § 1533(b)(3)(A) and is based on the Service’s 5-Year Review.

INTEREST OF PETITIONERS

Petitioners Reclamation District No. 108, Reclamation District No. 784, Reclamation District No. 1500, Levee District One, Sacramento River West Side Levee District, and Knights Landing Ridge Drainage District (collectively, “Districts”) are responsible for flood control, drainage, and irrigation activities within the Sacramento Valley. The Districts manage and maintain irrigation systems and levees in order to protect residents, businesses, and farms from flooding and inadequate drainage.

In recent years, the Districts have spent significant amounts of money and labor in order to mitigate for operational effects upon the VELB and its habitat. Thus, the VELB’s status as a threatened species is preventing the Districts from fully devoting their limited resources to their core missions of flood control, drainage, and irrigation management.

Petitioner California Central Valley Flood Control Association was established in 1926 to promote the common interests of its membership in maintaining effective flood control systems in California’s Central Valley for the protection of life, property, and the environment. California Central Valley Flood Control Association membership is limited to public agencies such as reclamation, flood control, levee maintenance, drainage and other special districts, and local government agencies. The Central Valley Flood Control Association has an interest in ensuring that its members’ common responsibility to protect life, property, and the environment is not restricted by unwarranted federal listing of species under the Endangered Species Act, such as that of the VELB.

Petitioner North Sacramento Land Company is a commercial developer and owns property adjacent to American River Parkway and California State Route 160 in Sacramento. For years, North Sacramento Land Company has desired to develop this property into commercial office space. This development would create needed jobs in Sacramento County and would serve as a model for environmentally sensible development. However, North Sacramento Land Company has been unable to develop this parcel due its classification as critical habitat for the VELB. *See* 45 Fed. Reg. 52,803.

Petitioners Sacramento Valley Landowners Association, Butte County Farm Bureau, Fresno County Farm Bureau, Sacramento County Farm Bureau, Solano County Farm Bureau, and Yolo County Farm Bureau (Landowner Associations) are nonprofit organizations representing the interests of landowners, farmers, and their families. Members of the Landowner Associations derive income from agricultural and other land use activities. But these members' ability to provide food and jobs to families and communities in the Central Valley through productive land use is restricted due to the VELB's status as a threatened species.

**THE SERVICE'S 5-YEAR REVIEW
SUPPORTS THE REMOVAL OF THE
VALLEY ELDERBERRY LONGHORN BEETLE
FROM THE LIST OF THREATENED SPECIES**

This agency listed the VELB as a threatened species under the Endangered Species Act in 1980. *See* 45 Fed. Reg. 52,803. After failing to review the status of the VELB for several years, the Service completed the 5-Year Review in 2005 pursuant to a settlement agreement with the California State Grange, the California Forestry Association, and the California Cattlemen's Association. *See* Settlement Agreement and Stipulation of Dismissal With Prejudice, *California State Grange v. Norton*, No. 2:05-cv-00560-MCE-PAN (E.D. Cal. Sept. 12, 2005) (Doc. 25) and *California State*

Grange v. Norton, No. 2:05-cv-00560-MCE-PAN (E.D. Cal. Sept. 20, 2005) (Doc. 27) (Stipulated Order Approving Settlement and Dismissing Case) (attached as Exhibit 2).

This Petition to remove the VELB from the list of threatened species is based on the 5-Year Review, which the Service completed by using information from an independent status review, peer-reviewed journal articles, the Service's 1984 *Recovery Plan for the Valley Elderberry Longhorn Beetle*, and Section 7 and Section 10 consultations under the Endangered Species Act. See 5-Year Review at 1.

The 5-Year Review recommended that the Service delist the species due to its recovery and that the delisting of the VELB be given a reclassification number of "2." See *id.* at 20. While the VELB was known to exist in less than 10 locations at the time of its listing in 1980, the Service noted that surveys since then "have identified approximately 190 locations of the beetle ranging from Shasta County to Fresno County." *Id.* at 19. Further, "[l]oss of riparian habitat has slowed . . . and a number of programs exist to restore and protect it. Efforts specific to [the VELB] have resulted in the protection of 50,000 acres of riparian habitat and the restoration of over 5,100 acres of beetle habitat." *Id.* at 19.

The Service's 5-Year Review also included a detailed analysis of the five criteria to be considered in removing a species, as mandated by Section 4(c)(2) of the Endangered Species Act. 16 U.S.C. § 1533(c)(2)(B)(i). A synopsis of the 5-Year Review's conclusions as to the five statutory factors is as follows:

1. Present or threatened destruction, modification, or curtailment of its current habitat or range: When the VELB was originally listed as a threatened species in 1980, habitat destruction was identified as one of the greater threats to the beetle due to the loss of riparian habitat. Since then, however, the rate of riparian habitat loss has slowed significantly due to limitations in the amount of riparian habitat remaining, protections provided for under the Endangered Species Act for the VELB and other species, other regulatory protections, and restoration efforts.

Further, although concerns remain over the ongoing maintenance of levees and canals for purposes of flood control and agriculture and the effects such maintenances has on VELB habitat, there has been an increase in the number of riparian restoration projects occurring in the Central Valley in recent years.

2. Overutilization for commercial, recreational, scientific, or educational purposes: This factor is not considered to be a threat to the VELB.

3. Disease or predation: There is little evidence regarding the impact of potential predators upon the beetle, making it difficult to determine the level of threat to predation.

4. Inadequacy of existing regulatory mechanisms: Numerous state and federal laws provide some degree of protection for VELB habitat, but the level of protection varies by action. The Service found that the inadequacy of regulatory mechanisms poses a threat to the VELB.

5. Other natural or manmade factors affecting its continued existence: Although pesticides may be affecting the VELB and its habitat, the magnitude of pesticide effects is uncertain because no specific evaluations of exposure or response have been undertaken.

Based on the Service's findings described above, removal of the VELB from the list of threatened species is warranted.

**THE SERVICE CONTINUES TO ASSERT
ENDANGERED SPECIES ACT JURISDICTION OVER
THE VALLEY ELDERBERRY LONGHORN BEETLE
DESPITE RECOGNIZING THE BEETLE'S RECOVERY**

This agency recognized in its 5-Year Review that the removal of the VELB from the list of threatened species is warranted due to the recovery of this species. *See 5-Year Review.* To the detriment of the regulated public, however, this agency continues to act as if the VELB is in fact a threatened species.

For example, much of Petitioner North Sacramento Land Company's property in Sacramento remains designated as VELB critical habitat, preventing the Company from providing needed jobs to the local community through the commercial development of this property.

In addition, the Environmental Protection Agency recently entered into a settlement with environmental groups, whereby the agency is enjoined from authorizing the use of numerous pesticides in areas containing VELB habitat while it determines the effects of these pesticides on the VELB and its habitat. *See* Stipulated Injunction and Proposed Order, *Center for Biological Diversity v. Environmental Protection Agency*, No. 07-2794-JCS (N.D. Cal. Jan. 12, 2010) (Doc. 104-1) and *Center for Biological Diversity v. Environmental Protection Agency*, No. 07-2794-JCS (N.D. Cal. May 17, 2010) (Doc. 121) (Order Approving Stipulated Injunction and Order) (attached as Exhibit 3).

These examples constitute a tremendous waste of both entrepreneurial opportunity and federal agency resources for a species that no longer requires federal protection due to its recovery. The Service's 5-Year Review demonstrates that the VELB is not a threatened species. This agency should not regulate the public as if it were otherwise.

CONCLUSION

In a November, 2009, letter, Representatives Lungren and McClintock requested that the Service remove the VELB from the list of threatened species and accurately summarized why the delisting is necessary:

We strongly urge the Service to initiate regulatory action to delist the Valley elderberry longhorn beetle. The recovery of the beetle is a conservation success story. It is incumbent upon the Service to ensure that the Endangered Species Act is used to protect species that are in need of protection, not to maintain costly regulatory obstacles that the "best scientific and commercial data available" shows are unwarranted.

Letter from Reps. Lungren and McClintock to the Honorable Ken Salazar, Secretary, U.S. Department of the Interior (Nov. 13, 2009) (attached as Exhibit 4).

Although the Assistant Secretary for Fish and Wildlife and Parks, Thomas L. Strickland, responded to the Representatives' letter by indicating that "progress continues towards making a final determination" concerning the VELB's status, a final determination has yet to be made. *See* Letter from Thomas L. Strickland, Assistant Secretary for Fish and Wildlife and Parks, to the Honorable Daniel E. Lungren (Jan. 7, 2010) (attached as Exhibit 5).

This agency may no longer delay the delisting of the VELB. By this Petition, Petitioners formally request that the Service abide by its statutory obligation under the Endangered Species Act and issue a final determination to remove the VELB from the list of threatened species. *See* 16 U.S.C. § 1533(b)(3)(A) (Service has 90 days to determine whether a petition may be warranted based on substantial information in the petition).

DATED: September 9, 2010.

Respectfully submitted,

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