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June 13, 2016

Robert Little, Forester II
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P.O. Box 944246
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RE: Nesting Survey for Jesse Crosswhite Exemptions (1-15EX-294 HUM, 1-15EX-295 & 1-15EX307 HUM)

Dear Robert:

In accordance to your May 17 Memo to RPF Cameron Holmgren (#2929), Mr. Crosswhite has hired me to conduct a survey to determine the nesting status of Great Blue Herons (GBH) on his property. This biological and regulatory review of the current and historical status of great blue herons (*Ardea herodias*) nesting in association with Mr. Crosswhite's property was conducted under the Z'berg-Nejedly Forest Practice Act 1973 (Public Resources Code Section 4551 et seq.). Thereto referred to as the California Forest Practice Rules (FPRs), this investigation also addresses Section 3503 and Section 3503.5 of the California Fish and Game Code.

Background

On May 23, 2016, CAL FIRE issued Jobey Tritchler (A-10965), the LTO of record for logging these exemptions a violation for operating within 300 feet of an alleged Great Blue Heron (GBH) rookery. Documented on the California Natural Diversity Data Base (CNDDDB), a database operated by CDFW and made available to subscribers for a yearly fee, this rookery is identified as "Occurrence Number 134". Unfortunately, CDFW did not report this historical heron rookery to the CNDDDB until August 10, 2015, which according to CAL FIRE Inspector Chris Curtis was two weeks after the RPF had submitted these logging permits. However, having failed to provide the meta-data indicating the recent nesting status of this rookery, it should be noted that the CNDDDB gives the last date that this rookery was observed as "201X-XX-XX".

Survey Method

The morning of May 25, 2016, I conducted a survey of the subject property between 05:45 and 07:45. Accompanied by Mr. Holmgren, after initially surveying the site associated with large bluish eggshell fragments, we spent approximately 30 minutes documenting the nesting status of nest structures previously identified by CDFW on this property. Returning to site of the eggshell fragments, we conducted a ten-minute methodical ground search for signs of nesting GBHs. Splitting up, Mr. Holmgren returned to the western side of the property to scan for GBH activity, while I stayed to monitor the site of the eggshell fragments.

Results

Whereas no nesting activity was detected in nest structures previously documented by CDFW, about 40 minutes into the survey, I heard squawking and beak clacking from the top of 54-inch DBH Redwood tree associated with the eggshell fragments (See Attachment A). Identified as coming from the western side of the tree, approximately 70 feet up, the vocalizations initially seemed to be coming from one chick only. Difficult to observe that high up in the canopy, I managed to find a vantage point of this nest just as an adult flew in, confirming the presence of one nearly fledged juvenile.

Subsequently to receiving a phone call from Mr. Holmgren, notifying me of a second adult heron approaching the nest tree, I heard a second chick begging from the eastern portion of the same tree. Relocation to a site just south of the nest tree, we observed another occupied nest with a nearly fledged juvenile. Whereas the eggshell search revealed the shells of four or five eggs, judging by the vocalizations detected during this survey, this tree only contained two nests, with one chick each (see attached field notes in Attachment B).

Discussion

In accordance to the FPRs, CCR 14 §895.1, an “active nest” is defined as a site at which breeding effort have been recently occurred as determined by CDFW, for the GBH that means within the last two years. Furthermore, CCR 14 §919.3(b)(3) only require explicit protection-zones for GBH rookeries in situations where five or more heron nests are clustered together. Although CDFW did not report this rookery to the CNDDDB until 2015, it seems this rookery was based on information that is nearly fifteen years old. First recorded in 2000, a chronology of events (see Attachment C) as documented in the public record indicates that the last time nesting herons were documented at this site was in 2001.

Furthermore, although SCOPAC Compliance Forester Ed Crane described the site as containing five “active” nests in 2000, given that he only reports seeing three live chicks (and one dead), this observation should at best be regarded as anecdotal. The regularity of which unoccupied and/or abandoned nests are mistaken for active also makes this observation suspect. Ambiguous as to the status of nest structures it has located on this property, CDFW’s Inspection Report signed by Joe Croteau also appears to have misinterpreted 2001 field notes submitted by SCOPAC Biologists Mark Freitas and Stacy Ssutu for herons nesting in association with 1-99-356 HUM. Although their notes describe two herons exhibiting nesting behavior, the attached drawings clearly show that there was only one active nest in 2001.

Whereas outside the critical period, CCR 14 §919.3(c)(3) require “that all nest trees containing active nests shall be left standing and unharmed”, in accordance to CCR 14 §919.3(d)(3), operations are permitted within 300 feet of a GBH rookery during the critical period, providing they be “staged with a gradual approach to the nest”. However, after the critical period the FPRs offer no explicit protection for individual nest trees not associated with a GBH rookery. As such, it is important to consider that timber operations on this property were conducted well after the critical period in the late fall.

Summary

It seems CDFW submitted this rookery observation to the CNDDDB based on a fifteen-year old SCOPAC map provided in 1-14-128 HUM, the Slater Creek THP. Recommending a seasonal disturbance buffer of 800 feet, far exceeding the FPRs, in attending the PHI for this THP CDFW showed no interest in verifying the status of this rookery. Unable to find any other survey data relating to this rookery, CDFW has nevertheless assumed that the rookery was also active within the last two years. However, in accordance to the California Environmental Quality Act (CEQA), section 21080 (e)(2) of the California Public Resources Code (PRC), such speculation is prohibited.

Although CDFW's role in the THP review process is strictly advisory, designated by CEQA as a "Responsible Agency", they are in accordance to PRC §21003 (d) required to track information developed from environmental review of individual projects and incorporate it into databases "which can be used to reduce delay and duplication in preparation of subsequent environmental review". Whereas PRC § 21003 (e) makes clear that such information should be used to assist in making subsequent or supplemental negative declarations or environmental impact reports, purchase of the CNNDDB comes with a disclaimer that highly recommends review of available meta-data. Consequently, I caution the use of this database as substantial evidence in matters concerning listed species and private property rights.

Please contact me if you have any questions.

Sincerely,

Troy Leopardo

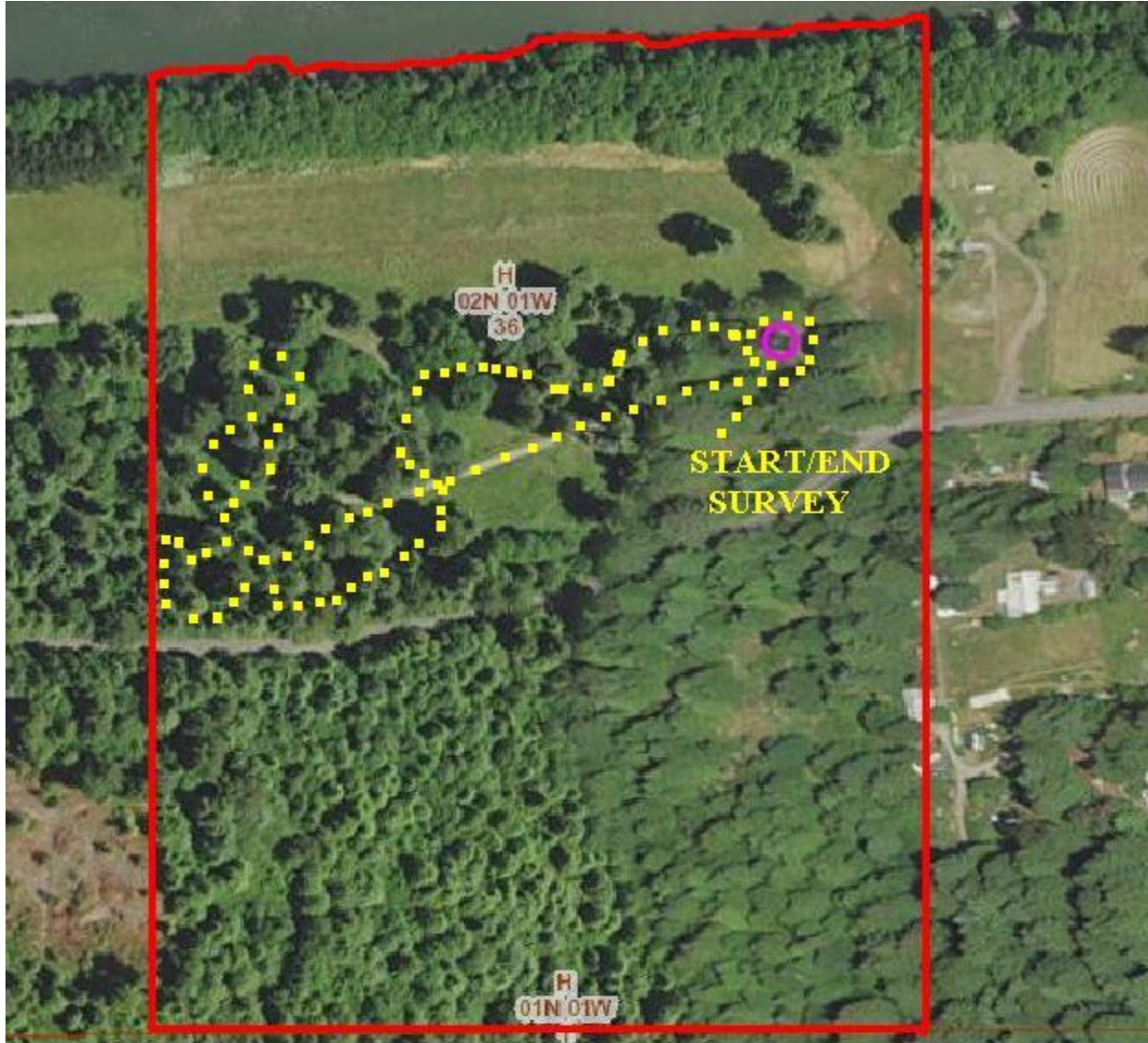


Private Consulting Biologist

Encl: Attachment A - Jesse Crosswhite Exemptions May 25, 2016 Heron Survey Map and Photos
Attachment B - Herons and Jesse Crosswhite Exemptions Chronology of Events
Attachment C - Crosswhite Exemptions May 25, 2016 Heron Field Notes

ATTACHMENT A - JESSE CROSSWHITE EXCEMPTIONS MAY 25, 2016 HERON SURVEY ROUTE AND PHOTOS

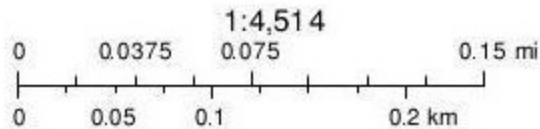
Figure 1. Aerial overview and map of May 25, 2016, search route and location of two active heron nests



LEGEND:

- **TWO ACTIVE GREAT BLUE HERON NESTS
IN 54" DBH REDWOOD TREE**
- □ □ □ □

SEARCH ROUTE



June 6, 2016



ATTACHMENT A - JESSE CROSSWHITE EXCEMPTIONS
MAY 25, 2016, HERON SURVEY ROUTE AND PHOTOS
PAGE 2

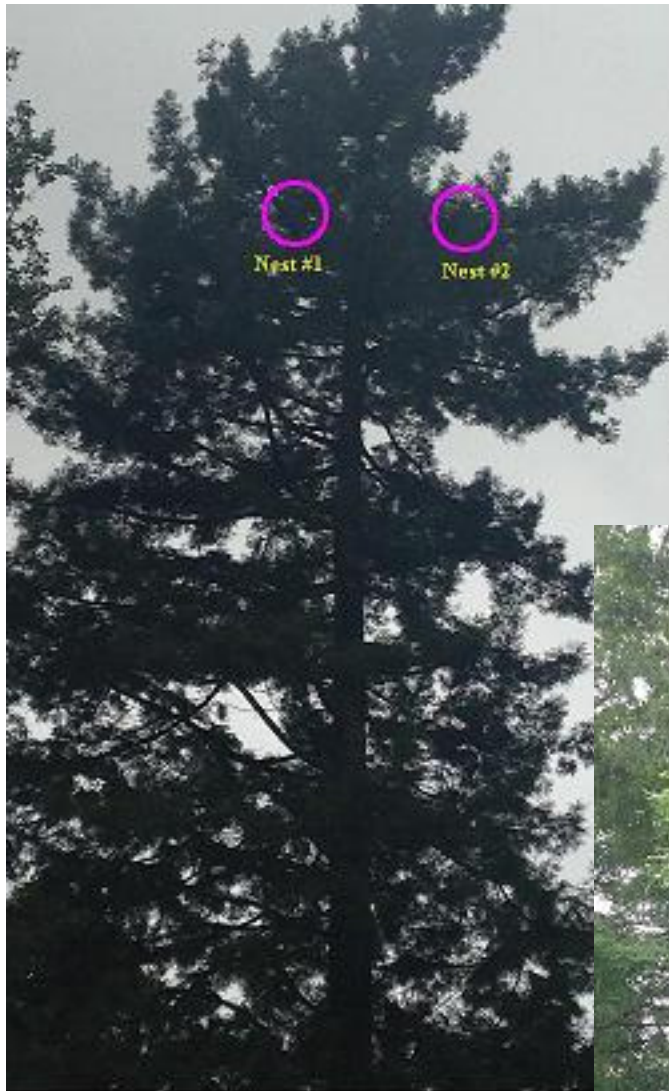


Figure 2. Heron Nest Tree, facing North



Figure 3. Base of 54 Inch DBH Heron Nest Tree, facing East. Eggshell fragments, whitewash and pray remains are consistent with two active heron nests



Attachment B - Herons and Jesse Crosswhite Exemptions Chronology of Events

This chronology of events relating to Great Blue Herons and the Jesse Crosswhite Exemptions (1-15EX-294 HUM, 1-15EX-295 HUM, and 1-15SEX307 HUM) was compiled from a literature review of existing metadata and a 2016 field inspections:

June 26, 2000: Initially based on an eyewitness account by SCOPAC Compliance Forester Ed Crane; former CAL FIRE Senior Wildlife Biologist John E. Harris states in 2000 consultation for 1-99-356 HUM that: “Five active nests were detected during the inspection containing at least 3 juvenile herons. Two of the juvenile herons were fully feathered and actively moving about the trees making accurate counts difficult...remains of one juvenile was observed under one of the nests. Additional juveniles may have been present; however, an intensive effort to document the exact number was not attempted due to concerns over disturbance.” **However, GBH pairs typically lay several eggs. Without additional information from a qualified wildlife biologist and in light of subsequent surveys, this consultation does not indicate that the number of occupied GBH nests on this property in 2000 ever reached the threshold above which the FPRs would consider them as a rookery.**

February 21, 2001: SCOPAC Biologists Mark Freitas and Stacy Ssutu surveyed Great Blue Heron (GBH) nests associated with 1-99-356 HUM. Although one of the original nest structures had apparently blown down, five remained, **but there were no signs of GBHs actively nesting at the time.** Furthermore, a nest structure earlier attributed to a GBH was found to contain nesting red-shouldered hawks

April 6, 2001: Ms. Ssutu, conducting a second survey, observed two GBHs (presumably a pair) exhibiting nesting behavior; however, **the other nests did not have occupants at the time**

June 7, 2001: In conducting a third survey to this site, although it appears Ms. Ssutu confirmed the presence of GBHs at the site, **there is no indication of additional occupancy or nesting activity**

December 28, 2001: SCOPAC’s year-end summary report to the agency formerly known as the California Department of Fish and Game confirms, “..evidence of substantial occupancy by...the copious amounts of whitewash seen beneath the nests as well as observations of the birds themselves”. Whereas this report notes the presence of nesting Red-shouldered hawks in what was previously a GBH nest, it also affirms, **in 2001 only two herons were actually observed nesting**

December 8, 2014: First Review Team Question #10 for 1-14-128 HUM, the Slater Creek THP, on land owned by William and Valerie Crosswhite, CAL FIRE comments on the failure to address site identified on attached maps as “Great Blue Heron Rookery”. **Noting that a stand examination of the subject property had not located nesting herons, the RPF nevertheless agree to change the plan in acknowledgment of “heron rookery ...mapped as being within 300 feet of the THP boundary”**

December 9, 2014: CAL FIRE Pre-Harvest Inspection for 1-14-128 HUM attended by California Department of Fish and Wildlife (CDFW) Environmental Specialist Simona Altman. Although Ms. Altman identifies two Redwood trees with structural elements for “Wildlife Tree Retention”, **curiously this report contains no references what so ever to actively nesting herons.** Nevertheless, by recommending a seasonal disturbance buffer of 800 feet around above-mentioned location, CDFW asked that the standard protection around this alleged rookery be extended by another 500 feet

August 10, 2015: Nesting GBHs on Mr. Crosswhite’s property recorded as Occurrence Number (ON) 134 were first reported to CNDDDB. Indication “A rookery ...reported in a Timber Harvest Plan (1-14-128 HUM) that was submitted to Calfire in 2014; rookery was located outside of the THP area on adjacent land. Needs work”, the CNDDDB goes on to speculate that “This is likely the new rookery site where the rookery at EQ#56...moved after the trees around that rookery were harvested in 1998 and again prior to 2009”

September of 2015: Jesse Crosswhite, owner of the adjacent parcel and son of William and Valerie, submits one exemption for removing dying or diseased tree, another for a public utility right of way. He also retains Cameron Holmgren (RPF#2929) to prepare Three-Acre Exemption

November 17, 2015: CAL FIRE Inactive Inspection for 1-15EX-294-HUM acknowledges that logging appears complete, but that pile burning yet remained. Nevertheless, Mr. Holmgren was informed that no violations were observed on the area inspected

October and November of 2015: Timber operations were conducted under above-mentioned exemptions in accordance to the FPR

March 10, 2016: In accordance to their preliminary inspection report dated May 18, “CDFW inspected the exemption area from Blue Slide road, upslope and adjacent the property”, noting “multiple redwood stumps ...submerged in water” and “a nest in the upper portion of a large redwood”. However, this report gives no indication of having observed any actual birds

April 5, 2016: Involved with a heron rookery controversy in Del Norte County, RPF Thomas Blair and Consulting Wildlife Biologist Troy Leopardo visited the property mid day to see if they could locate nesting herons. Conducting a 30-minute walk-around, they inspected three un-occupied nest structures, but did not observe any GBHs

April 13, 2016: In accordance to a preliminary inspection report dated May 18, “CDFW conducted an inspection on the property with CAL FIRE Forester Chris Curtis and the property owner”, during which they continued to inventory unoccupied nests

May 2, 2016: CDFW Memo to CAL FIRE outlining quick protocol to determine whether herons are nesting on the property

May 11, 2016: In accordance to CDFW preliminary inspection report dated May 18, CDFW attended CAL FIRE site inspection, during which they again relocated and confirmed the presence of unoccupied nests. “Additionally, great blue heron eggshell fragments and whitewash were located approximately at CDFW map point A (see Figures 1 and 7). Although they did not observe any actual GBHs, after having ended their field investigation, the RPF and Mr. Crosswhite both notified CDFW that they had observed a GBH on a nest

May 13, 2016: Informed of the resent discovery of eggshell fragments attributed to nesting GBH on this property, Messes. Blair and Leopardo returned to the property during the late morning and spent 45 minutes looking for this alleged GBH rookery. Although no signs of GBHs were detected, a though search of the area designated by CDFW as “Map Point A” revealed eggshells from an estimated four (4) naturally hatched eggs

May 17, 2016: CAL FIRE Memo to Mr. Holmgren requesting that he “approach the landowner and get permission to update the record for DFW based on...resent observations last week”

May 23, 2016: CAL FIRE Forest Practice Enforcement Specialist Robert Little (RPF#2651) issued LTO Jobey Tritchler a violation for conducting timber harvesting “within 300 feet of the nest tree...and area the area around a known Great Blue Heron Rookery site”

May 25, 2016: Retained by Mr. Crosswhite to conduct an inventory of nesting GBHs on his property, Mr. Leopardo conducted a survey of the property between 05:42 and 07:45 accompanied by Mr. Holmgren. Visiting all the trees previously identified as potential nest trees to confirm their unoccupied status, two active GBH nests were observed approximately 85 feet up in a 54 inch DBH Redwood tree associated with CDFW “Map Point A (see attached field notes)



ATTACHMENT C - JESSE CROSSWHITE EXCEMPTIONS
MAY 25, 2016, HERON SURVEY FILED NOTES

May 25, 2016 Crosswhite Heron - Cont.
Rio Del, Overcast now wind
05:42 Arrive at site with
RPF Cameron.

05:45 start initial survey
of property by site of observed
egg shell fragments and proceeded
to investigate nest structures
from east to west with the
RPF. No egg shells or signs
of nesting behavior was observed
except for at site #1 (007)
N 40° 30.437' W 124° 07.731'

06:22 Back at site #1
observed 4 max 5 egg shell
fragments. (Max 5 eggs)

May 25, 2016 Crosswhite
Heron - Cont.

06:26 stayed to
observe site 1, while
the RPF walked over to the
western portion of the
ownership.

06:29 - Adult heron
seen flying in to west
side of 54 in Redwood
about 80' in the canopy and
could hear young begging.
- Cooper Hawk flies eastward.

06:30 Relocated to site north
of tree to observe nest
with one chick. It
kept begging for 14 min.

May 25, 2016 - Crosswhite
Heron - Cont.

06:45
Periodically I heard a
second chick begging and
clapping its beak in tandem.

06:50 - Adult heron returns,
and both chicks start
begging.

07:05 - Relocate to south
of site 1, chicks quiet.

07:14 - Adult heron
lands in east portion
of tree, feed one chick.

May 25, 2016 Crosswhite
Heron

7:20 Heron chicks
quiet down again.

7:21 - Rejoined by
RPF.

7:45 ended survey.