



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-ES-2012-N113; FF06E24000-123-FXES11130600000D2]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit

Application; Draft Environmental Assessment and Draft San Luis Valley Regional Habitat Conservation Plan, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications from the Rio Grande Water Conservation District; Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache Counties; the municipalities of Alamosa, Monte Vista, Del Norte, and South Fork; and the State of Colorado Department of Natural Resources (hereafter collectively referred to as “the applicants”) for incidental take permits under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing the permits in association with implementation of a regional habitat conservation plan (HCP) in the San Luis Valley, Colorado. Pursuant to the ESA and the National Environmental Policy Act, we announce the availability of the draft HCP and draft environmental assessment for review and comment by the public and Federal, Tribal, State, and local governments.

DATES: Written comments must be submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send written comments by mail to Patty Gelatt, Western Colorado Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506, or via email to sanluisvalleyhcp@fws.gov. You also may send comments by facsimile to (970) 245-6933. The draft HCP and EA are available on our Colorado Ecological Services website at <http://www.fws.gov/coloradoES/SLV-HCP.html>. You also may review copies of these documents during regular business hours at the Western Colorado Ecological Services Office (WCESO) (see address above). If you do not have access to the website or cannot visit our office, you may request copies by telephone at (970) 243-2778 or by letter to WCESO.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Ireland, U.S. Fish and Wildlife Service (see **ADDRESSES** above), (970) 243-2778 extension 16.

SUPPLEMENTARY INFORMATION:

The applicants have submitted permit applications to us for incidental take of the federally endangered southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) and western U.S. distinct population segment of the yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo), a candidate for listing under the ESA (16 U.S.C. 1531 *et al.*). The permits would cover routine activities concerning agriculture, small community infrastructure, and riparian conservation and restoration in the San Luis Valley. The HCP provides a regional conservation strategy to minimize and mitigate the impacts of the potential incidental take.

This notice is provided pursuant to section 10(c) of the ESA and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6; 43 CFR part 46). We

are requesting comments on the proposed HCP and our consideration as to whether the draft HCP meets the permit issuance criteria under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*). We also have prepared a draft EA to comply with NEPA (42 U.S.C. 4321 *et seq.*), and will evaluate whether the proposed action, issuance of permits to the Applicants, and other alternatives in the draft EA will cause significant impacts to the quality of the human environment and whether the EA is adequate to support a Finding of No Significant Impact (FONSI), or whether an Environmental Impact Statement (EIS) is necessary.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit “take” of species listed as threatened and endangered. Take is defined under the ESA to include actions that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1538). Harm includes significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing behavioral patterns, such as breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, the Service may issue permits to take listed species incidental to, and not the purpose of, carrying out otherwise lawful activities. Section 10(a)(1)(B) of the ESA and regulations at 50 CFR 17.22 and 17.32 contain provisions for issuing permits to non-Federal entities for incidental take of listed species, provided that an HCP is prepared and the Service determines the following criteria are met:

- The taking will be incidental;

- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such take;
- The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided;
- The take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will implement any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

As part of the applications for permits to authorize incidental take, the District has submitted a draft HCP on its own behalf and on behalf of the other applicants. The proposed activities covered by the draft HCP include operation, maintenance, and construction of diversions, ditches, canals, roads, bridges, and utility lines; livestock grazing and agricultural practices; tamarisk and noxious weed control; and floodplain maintenance near towns and cities. Rather than individual landowners seeking their own permits for these activities on a case-by-case basis to avoid liability for take under the ESA, the draft HCP is designed as a regional conservation plan that proposes to cover landowners for the suite of activities throughout the San Luis Valley for a 30-year permit term. The District proposes to coordinate implementation of the HCP's comprehensive conservation strategy for the plan area, and individual permits would be issued to each of the applicants. Each of the counties would pass HCP-enabling land-use ordinances that would address implementation of the HCP's conservation measures and authorization of take for landowners. The counties would ensure compliance with HCP covered activities through these ordinances. The HCP includes measures to mitigate the habitat impacts of

the covered activities through riparian habitat conservation, enhancement, and management measures. As the HCP administrator, the District would be responsible for implementation of the mitigation measures. Habitat monitoring is proposed to ensure that the habitat quality of mitigation lands is sufficient to offset impacts and would track long-term trends. This regional conservation approach is intended to provide increased efficiency and effectiveness in the long-term protection and conservation of the flycatcher and cuckoo and their habitat while streamlining ESA compliance for the continuation of agricultural and other economic activities in the San Luis Valley.

The draft HCP's area comprises the entire San Luis Valley within Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache Counties. The plan area boundary follows the lower edge of U.S. Forest Service lands in most places or county lines. The size of the plan area is about 2.9 million acres and includes about 250 miles of streams in the Rio Grande watershed.

National Environmental Policy Act

We published a notice of intent to prepare an EA or EIS for the proposed San Luis Valley HCP in the **Federal Register** on January 7, 2005 (70 FR 1457), seeking comment on the scope of issues and alternatives for an EA or EIS. We also conducted a public scoping meeting in Alamosa, Colorado, on January 13, 2005. We considered public input from this process during development of the draft HCP and draft EA. We received four comment letters during the public scoping period: one each from the Colorado Division of Water Resources, the Alamosa Mosquito Control District, the San Luis Valley Water Conservancy District, and the Alamosa River Restoration Project. Commenters provided information on their activities for consideration to be covered by

the HCP. The letters were in support of developing the HCP or were neutral. Comments made during the scoping meeting addressed the HCP process and implications for property owners. We determined that preparing a draft EA was appropriate because we do not anticipate significant impacts to the human environment that would require an EIS.

In compliance with the NEPA, we analyzed the impacts of implementing the HCP, issuance of the permits, and a reasonable range of alternatives in the draft EA. Based on these analyses and any new information resulting from public comment on the proposed action, we will determine if issuance of the permits would cause any significant impacts to the human environment. After reviewing public comments, we will evaluate whether the proposed action and alternatives in the draft EA are adequate to support a FONSI under the NEPA. We now make the draft EA available for public inspection online or in person at the Service's WCESO (see **ADDRESSES**).

The NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes three alternatives that were derived from discussions with the District during the development of the HCP. We analyzed the following three alternatives in the draft EA:

- **No Action.** In this alternative, we would not issue permits to the applicants. Rather, the status quo for ESA compliance would remain, whereby landowners would choose to apply for individual permits for specific projects and ongoing activities in the San Luis Valley on a case-by-case basis.
- **Public Land Mitigation HCP.** This alternative is similar to the proposed alternative in that it would provide a single regional HCP covering the same activities and

providing the same permitting structure. However, this alternative shifts emphasis of habitat restoration and enhancement to public lands, coupled with voluntary measures to minimize impacts on private lands.

- **San Luis Valley Regional HCP.** This is currently identified as the proposed alternative and is described in **Background**.

Next Steps

We will evaluate the submitted comments and revise the HCP and EA, as appropriate. In compliance with section 7(a)(2) of the ESA, we will analyze whether issuance of the permits would jeopardize listed, proposed, or candidate species or adversely modify any designated or proposed critical habitat. We will then determine whether the permit applications meet the requirements of section 10(a) of the ESA. We will use the results of all these analyses in a final findings document to determine whether to issue the permits. Pursuant to section 10(a)(1)(b) of the ESA, we will issue the permits to the applicants if the requirements are met.

Public Comments

We invite the public to comment on the proposed HCP and draft EA during a 60-day public comment period ending on the date specified above in **DATES**. Comments can be submitted to the WCESO (see **ADDRESSES**). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your

entire comment—including your personal identifying information—may be made publicly available at any time. While you may request at the top of your document that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Date: July 3, 2012

**Bridget F. Fahey, Acting Assistant Regional Director—Ecological Services
Mountain-Prairie Region, Denver, Colorado**

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