



**Billing Code: 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R2–ES–2020–N033; FXES11140200000–201–FF02ENEH00]**

**Application for an Incidental Take Permit; Low-Effect Habitat Conservation Plan for the Four Corners Water Development Project, Pueblo of Santa Clara, Rio Arriba County, New Mexico**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), make available an application for an incidental take permit (ITP) supported by a low-effect habitat conservation plan (LEHCP) for the Four Corners Water Development Project, Pueblo of Santa Clara, Rio Arriba County, New Mexico. The Pueblo of Santa Clara has applied to the Service for an ITP under the Endangered Species Act of 1973, as amended. The requested ITP, which would be in effect for a period of 20 years, if granted, would authorize incidental take of the federally endangered Rio Grande silvery minnow. In accordance with National Environmental Policy Act (NEPA) requirements, we have determined that the proposed action qualifies for a categorical exclusion as low effect. We are accepting comments on the permit application, proposed LEHCP, and draft NEPA screening form.

**DATES:** *Submission of comments:* We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE**

***FEDERAL REGISTER***].

**ADDRESSES:** *Obtaining documents:* You may obtain copies of the ITP application, the LEHCP, or other related documents by going to the Service's web site at <https://www.fws.gov/southwest/es/NewMexico/>. Alternatively, a limited number of CD-ROM and printed copies of the LEHCP are available, by request, from the Project Leader, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113; telephone 505-346-2525; fax 505-346-2543. Please note that your request is in reference to the Pueblo of Santa Clara LEHCP.

The ITP application is available by mail from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Copies of the LEHCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:

- U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 2105 Osuna Rd NE, Albuquerque, NM 87113.

*Submitting comments:*

You may submit written comments by one of the following methods:

- *By email:* nmesfo@fws.gov. Please note that your request is in reference to the Pueblo of Santa Clara HCP.
- *By hard copy:* Project Leader, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE, Albuquerque, NM 87113; telephone 505-346-2525; fax

505–346–2542. Please note that your request is in reference to the Pueblo of Santa Clara LEHCP.

We request that you submit comments by only the methods described above.

Generally, we will post any personal information you provide us (see the **Public Availability of Comments** section for more information).

**FOR FURTHER INFORMATION CONTACT:** Seth Willey, Acting Project Leader, U.S. Fish and Wildlife Service, 2105 Osuna Rd NE, Albuquerque, NM 87113 or (505) 761–4781.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), make available an application for an incidental take permit (ITP) supported by a low-effect habitat conservation plan (LEHCP) for the Four Corners Water Development Project, Pueblo of Santa Clara, Rio Arriba County, New Mexico. The Pueblo of Santa Clara has applied to the Service for an ITP under the Endangered Species Act of 1973, as amended. The requested ITP, which would be in effect for a period of 20 years, if granted, would authorize incidental take of the Rio Grande silvery minnow (*Hybognathus amarus*; silvery minnow), which is listed as an endangered species under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The potential incidental take would be associated with the pumping of up to 1 million gallons per day from four existing shallow alluvial wells within the proposed plan area. This action, when considered alone, has minor effects on the silvery minnow. However, removal of this groundwater may have small impacts on the volume of the spring runoff that would reach downstream in low flow years, which, when combined with the cumulative effects of

other existing and future water management actions, could affect the threshold flows needed for successful silvery minnow spawning and recruitment in the permit area. In accordance with National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements, we have determined that the proposed action qualifies for a categorical exclusion as low effect. We are accepting comments on the permit application, proposed LEHCP, and draft NEPA screening form supporting using a categorical exclusion.

### **National Environmental Policy Act Requirements**

In accordance with the requirements of NEPA, we advise the public that:

1. We have determined that the proposed permit action qualifies for categorical exclusion as low effect. We are accepting comments on the permit application and draft NEPA screening form supporting use of a categorical exclusion; and

2. The applicant has developed a LEHCP in support of an application for an ITP, which describes the measures the applicant has volunteered to take to minimize and mitigate the effects of incidental take of the silvery minnow to the maximum extent practicable pursuant to section 10(a)(1)(B) of the ESA.

As described in the LEHCP, the potential incidental take of silvery minnow could occur within the Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir in New Mexico, and could result from otherwise lawful activities.

### **Background**

Section 9 of the ESA and our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17 prohibit the “take” of fish or wildlife species listed

as endangered or threatened. Take of listed fish or wildlife is defined under the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct: (16 U.S.C. 1532(19)). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of—the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for endangered and threatened wildlife species are at 50 CFR 17.22 and 17.32, respectively. In addition to meeting other criteria, the take authorized by an incidental take permit must not jeopardize the existence of federally listed fish, wildlife, or plants.

### **Proposed Action**

The ITP would cover incidental “take” of the silvery minnow associated with the pumping of up to 1 million gallons per day (mgd) from four existing shallow alluvial wells within the permit area (the “covered activities”). The proposed action is the issuance of an ITP by the Service for the covered activities in the permit area, pursuant to section 10(a)(1)(B) of the ESA.

The requested term of the permit is 20 years. To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed and proposes to implement its LEHCP, which describes the actions to reduce or avoid impacts the applicant has agreed to undertake. These actions are designed to minimize and mitigate for the impacts of the potential incidental take of the silvery minnow, to the maximum extent practicable, and ensure that incidental take will not appreciably reduce the likelihood of the survival and recovery of this species in the wild.

The applicant proposes to minimize and mitigate impacts to the silvery minnow by modifying pumping operations when flow conditions are likely to result in the estimated densities of silvery minnow in the permit area to be below those considered self-sustaining. That is, when the May/June runoff flows that cross downstream stream gauges are low. The Pueblo of Santa Clara will suspend the proposed new pumping amount for 1 week in May when the forecasted total May-June runoff volume of the Rio Grande at Otowi Bridge Gauge is at or below the threshold value of approximately 205,010 acre-feet. The runoff volume during the months of May and June for the Rio Grande at Otowi Bridge Gauge in New Mexico is estimated in the Basin Data Reports that are released each year in April and May by the U.S. Department of Agriculture Natural Resources Conservation Service and National Water Climate Center (online at <https://www.wcc.nrcs.usda.gov/basin.html>). The cessation of the up to 1 million gallons per day of groundwater pumping under those specified threshold conditions would result in an increase of up to 21.5 acre-feet of surface water runoff that would contribute to spring runoff during low-flow years.

### **Next Steps**

We have made a preliminary determination that the applicant's LEHCP, including the proposed mitigation and minimization measures has (1) minor or negligible effects on federally listed or candidate species and their habitats and (2) minor or negligible effects on other environmental values or resources. We will evaluate the permit application, the LEHCP, associated documents, and comments we receive to determine whether the permit application meets the requirements of the ESA, NEPA, and implementing

regulations. If we determine that all requirements are met, we will approve the LEHCP and issue the ITP under section 10(a)(1)(B) of the ESA to the Pueblo of Santa Clara for take of silvery minnow in accordance with the terms of the LEHCP and specific terms and conditions of the authorizing permit. We will not make our final decision until after the 30-day comment period ends, and we will fully consider all comments we receive during the public comment period.

### **Public Availability of Comments**

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. Before including your address, phone number, email 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 can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### **Authority**

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: February 24, 2020.

**Amy L. Lueders,**

*Regional Director, Southwest Region,*

*U.S. Fish and Wildlife Service.*

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