



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2020–0039; FF08ESMF00–FXES11140800000–189]

Dos Osos Reservoir Replacement Project, Contra Costa County, California; Draft Categorical Exclusion and Draft Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comment.

SUMMARY: We, the U. S. Fish and Wildlife Service, announce the availability of a draft categorical exclusion under the National Environmental Policy Act. We also announce receipt of an application for an incidental take permit under the Endangered Species Act (ESA), and receipt of a draft habitat conservation plan. The East Bay Municipal Utility District (EBMUD) (applicant) has applied for an incidental take permit under the ESA for the Dos Osos Reservoir Replacement Project in Contra Costa County, California. The permit would authorize the take of one species incidental to the construction of the project. Incidental take coverage is not being sought for operation and

maintenance of the project, as these activities are covered, analyzed, and mitigated for under the existing EBMUD Low-Effect East Bay HCP. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* The draft categorical exclusion (draft CatEx), draft habitat conservation plan (HCP), and any comments and other materials that we receive are available for public inspection at <http://www.regulations.gov> in Docket No. FWS–R8–ES–2020–0039.

Submitting Comments: To submit comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft CatEx, draft HCP, or both.

- *Internet:* Submit comments at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2020–0039.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2020–0039; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see **Public Comments** and **Public Availability of Comments**, under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jason Hanni, Fish and Wildlife Biologist, or Ryan Olah, Chief, Coast Bay Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, by phone at 916–414–6600 or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft categorical exclusion (CatEx), prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. This notice also announces the receipt of an application from the East Bay Municipal Utility District (EBMUD) (applicant) for a 15-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of an HCP with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicant prepared the draft Los Osos Reservoir Replacement Project Low-Effect Habitat Conservation Plan (draft HCP) pursuant to section 10(a)(1)(B) of the ESA. The purpose of the CatEx is to assess the effects of issuing the permit and implementing the draft HCP on the natural and human environment.

Background

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened

under section 4 of the ESA. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal habitat conservation plan (HCP) program, go to <http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf>.

National Environmental Policy Act Compliance

The proposed permit issuance triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The draft CatEx was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action, any alternatives, and associated impacts, and to disclose any irreversible commitments of resources.

Proposed Action Alternative

Under the Proposed Action Alternative, the Service would issue an ITP to the applicant for a period of 15 years for certain covered activities (described below). The applicant has requested an ITP for one covered species (described below), which is listed as threatened under the ESA.

Habitat Conservation Plan Area

The geographic scope of the draft HCP encompasses 2.98 acres, which encompasses both the 0.98-acre permanent impact and 2.00 acres of temporary impact areas. The project would result in the demolition of the existing water reservoir and replacing it with two new 120,000-gallon steel-bolted reservoirs located at 263 El Toyonal, in the City of Orinda, Contra Costa County, California.

Covered Activities

The proposed ESA section 10 ITP would allow take of one covered species from covered activities in the proposed HCP area. The applicant is requesting incidental take authorization for covered activities, including site preparation, construction, and access road maintenance in the project area. The applicant is proposing to implement a number of project design features, including best management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the take from the covered activities.

Covered Species

The Alameda whipsnake (*Masticophis lateralis euryxanthus*), a species federally listed as threatened, is proposed to be included as a covered species in the proposed HCP:

No-Action Alternative

Under the No-Action Alternative, the Service would not issue an ITP to the applicant, and the reservoir would not be constructed. The No-Action Alternative is not feasible, based on the purpose and need of the project. The existing reservoir is at the end of its useful life, due to deterioration of the structural materials. The metal on the existing reservoir is corroding, the roof is deteriorating, and the entire aging structure will eventually will be unable to maintain an adequate water supply and serve its intended function. EBMUD must replace this critical water distribution facility and improve the level of service in the pressure zones by raising the elevation of the proposed new dual Dos Osos Reservoirs. In addition, the project is necessary to increase operational flexibility by replacing the existing single reservoir with new dual Dos Osos Reservoirs.

For these reasons, the No-Action Alternative has been rejected.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice, the draft CatEx, and the draft HCP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including

your personal identifying information—might be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action for the potential issuance of an ITP. If the intra-Service consultation confirms that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

Authority

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*) and its implementing regulations at 40 CFR 17.22.

**Jennifer Norris,
Field Supervisor,
Sacramento Fish and Wildlife Office,
U.S. Fish and Wildlife Service,
Sacramento, California.**

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