



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2023-0043; FXES1114080000-234-FF08ECAR00]

Endangered and Threatened Wildlife and Plants; Proposed Low-Effect Habitat Conservation Plan for the Sweetwater Authority Habitat Management Program and Habitat Recovery Project, County of San Diego, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce receipt of an application for an incidental take permit under the Endangered Species Act and a draft habitat conservation plan from the Sweetwater Authority. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, which is also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: To ensure consideration, please send your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents this notice announces, along with public comments received, online in Docket No. FWS-R8-ES-2023-0043 at <https://www.regulations.gov>.

Submitting Comments: You may submit comments by one of the following methods:

- *Online:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS-R8-ES-2023-0043.
- *Email:* fw8cfwocomments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760-431-9440 (telephone). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Sweetwater Authority (applicant) for a 5-year incidental take permit for five covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The applicant is seeking a permit to incidentally take four animal species and seeking assurance for one plant species (all are federally listed species) during the term of the proposed 5-year permit. The permit is needed to authorize take of listed animal species (including harm, death, and injury) in the course of activities associated with the implementation of the Sweetwater Reservoir Habitat Management Program (HMP), removal of the requirement to hold reservoir water elevation at or below 230 feet (ft), and implementation of the Sweetwater Reservoir Wetlands Habitat Recovery Project (HRP) within the HMP area in San Diego County, California. A conservation program to avoid, minimize, and mitigate anticipated impacts from project activities would be implemented as described in the habitat conservation plan (HCP) prepared by the applicant.

We are requesting comments on the permit application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed incidental take permit qualifies as "low effect" and may

qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, which is also available for public review.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. "Take" is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed animal species. "Incidental take" is defined by the Act's implementing regulations as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32. The definition of take under the Act does not apply to plant species; however, plant species identified in an HCP are included on the permit as covered species in recognition of the conservation measures provided for them under the HCP, and these plants receive "no surprises" regulatory assurances under the permit.

The HMP area is in southern San Diego County, south of the community of Spring Valley, along the Sweetwater River. The Sweetwater Reservoir is a managed surface water storage facility in the Sweetwater River Watershed that receives direct local runoff from the watershed's middle basin, water transfers from Loveland Reservoir (which captures water runoff from the watershed's upper basin), and imported water, when available, through the San Diego County Water Authority aqueduct. The HMP area

supports coastal sage scrub, mulefat scrub, southern willow forest, and nonnative grassland vegetation communities, which include potential habitat for the covered species: the federally listed endangered least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*), and the federally listed threatened coastal California gnatcatcher (*Polioptila californica californica*), yellow-billed cuckoo (*Coccyzus americanus*), and Otay tarplant (*Deinandra conjugens*). More details on the specific parcels and their locations are available in the permit application (see **ADDRESSES**).

The applicant is seeking an incidental take permit for implementation of the HMP, removal of the 230-ft-elevation imported water restrictions, and implementation of the 66.9-acre (ac) HRP within the 250-ac HMP area. The HMP area was originally set aside for conservation in 1994 to preserve and manage least Bell's vireo and southwestern willow flycatcher and their habitat, while providing the applicant the ability to manage the Sweetwater Reservoir for drinking water purposes. In 2005, an irrevocable dedication of land for wildlife preservation was created on 52.5 ac of riparian habitat within the HMP area potentially suitable for least Bell's vireo, and associated mitigation credits were established for applicant project impacts to least Bell's vireo and riparian habitat. The HRP is a grant-funded project and will establish 66.9 ac of additional riparian and wetland habitat within the managed portion of Sweetwater Reservoir, using a combination of passive and active techniques. The applicant also proposes to remove the 230-ft restriction and allow the water elevation to reach the high point of the dam (239 ft) on an infrequent basis, to increase water storage during high-rainfall years. Raising the water elevation threshold may result in infrequent flooding and temporary impacts to riparian habitat, with reproductive impacts to least Bell's vireo, and also potentially to southwestern willow flycatcher and yellow-billed cuckoo should they be observed on site in the future. The HCP requires an update to the HMP to address changes in reservoir

operations and adaptive management of reservoir levels; the HMP update must be completed and approved by the Service prior to allowing imported water above the 230-ft elevation. The updated HMP will allow for the establishment of additional mitigation credits based on newly established and restored riparian habitat placed under in-perpetuity conservation.

The HMP area provides regionally important habitat for least Bell's vireo as well as potential habitat for southwestern willow flycatcher and yellow-billed cuckoo. We anticipate minor periodic impacts to least Bell's vireo, and potentially to southwestern willow flycatcher and yellow-billed cuckoos, during implementation of the HRP and HMP, and infrequent, temporary flooding impacts associated with the increase in the reservoir elevation in periods of high rainfall. Proposed maintenance activities within the HMP also have the potential to result in minor periodic impacts to the coastal California gnatcatcher in upland coastal sage scrub habitat. Critical habitat for least Bell's vireo, southwestern willow flycatcher, coastal California gnatcatcher, and Otay tarplant occur within the 250-ac HMP area proposed to be conserved in perpetuity.

Proposed Action and Alternatives

The proposed action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to covered species. The applicant proposes to preserve the entire 250-ac HMP in perpetuity through an irrevocable dedication or similar instrument. As project-specific mitigation, the applicant will debit 37.5 ac from established riparian habitat mitigation credits within the HMP. Funding for habitat management within the HMP will come from the applicant's general funds, an endowment for in-perpetuity funding, or other mechanism(s) agreed upon by the Service and the California Department of Fish and Wildlife.

Three alternatives to the taking of the listed species under the proposed action are considered in the proposed HCP. Under the no-action alternative, no authorized incidental take of covered species would occur, and no additional habitat restoration or management would be conducted in the HMP to expand habitat for least Bell's vireo, southwestern willow flycatcher, or yellow-billed cuckoo. Under the HRP with channel modifications alternative, extensive grading and channel modifications within the floodplain would improve natural hydrology with substantial impacts to existing riparian habitat but ultimately more sustainable hydrological function. This alternative would result in an increase in the temporal loss of riparian habitat and breeding territories relative to the proposed action and require additional regulatory permitting. Under the alternative for retaining the 230-ft imported water restriction, the water storage capacity of the reservoir would not be increased to meet regional drinking water demands. While this alternative would reduce potential infrequent temporary impacts to least Bell's vireo, southwestern willow flycatcher, and yellow-billed cuckoo and their habitat, habitat flooding with the potential to impact covered riparian birds and their habitat may still occur within the HMP in high-rainfall years, and the applicant would not be eligible for the grant that is proposed to fund the HRP. The proposed project achieves the applicant's objectives and maximizes riparian vegetation and least Bell's vireo habitat, while minimizing potential impacts to covered species.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project would individually and cumulatively have a minor, nonsignificant effect on the covered species and the human environment. Therefore, we have preliminarily determined that the proposed Endangered Species Act section 10(a)(1)(B) permit would be a "low-effect" incidental take permit that individually or cumulatively would have a minor effect on the species and may qualify for application of a categorical exclusion pursuant to the Council

on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A "low-effect" incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Public Comments

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500-1508 and 43 CFR 46).

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