



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2023-0076; FXES1114080000-234-FF08EVEN00]

Endangered and Threatened Wildlife and Plants; Draft Habitat Conservation Plan and Draft Categorical Exclusion; Blacklake Sewer System Consolidation Project, San Luis Obispo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Nipomo Community Service District (Applicant) for an incidental take permit (ITP) under the Endangered Species Act. The Applicant requests the ITP to take the California red-legged frog (*Rana draytonii*) incidental to the construction of a new lift station and associated facilities to decommission the existing Blacklake Wastewater Reclamation Facility, in San Luis Obispo County, California. We request public comment on the application, which includes the Applicant's proposed habitat conservation plan (HCP), and 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, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

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 documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R8-ES-2023-0076 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2023-0076.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R8-ES-2023-0076; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Kirby Bartlett, Fish and Wildlife Biologist, kirby_bartlett@fws.gov (by electronic mail), or at the Ventura Fish and Wildlife office (by telephone at 805-644-1766. 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 Fish and Wildlife Service (Service), announce receipt of an application from Nipomo Community Service District (Applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The Applicant requests the ITP to take the California red-legged frog (*Rana draytonii*) incidental to activities associated with the decommissioning of the Blacklake Wastewater Reclamation Facility (WRF) and the construction of a lift station to divert wastewater in San Luis Obispo County, California. 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 this

proposed ITP 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 part 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, both of which are also available for public review.

Background

The Service listed the California red-legged frog as threatened on May 23, 1996 (61 FR 25813). Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered (16 U.S.C. 1538), where take is defined to include the following activities: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species 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 are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Applicant’s Proposed Activities

The Applicant has applied for a permit for incidental take of California red-legged frog. The take would occur in association with activities necessary for the decommissioning of the Blacklake WRF and the construction of a lift station to divert wastewater. The California red-legged frog has a known breeding population adjacent to the Blacklake WRF, in a wastewater effluent pond on a private golf course. The proposed

decommissioning of the Blacklake WRF will result in the elimination of the primary water source maintaining the adjacent effluent storage pond. Therefore, it is assumed that it will no longer provide suitable aquatic breeding habitat for the species.

The HCP includes avoidance and minimization measures for the California red-legged frog and mitigation for unavoidable loss of occupied habitat. The Applicant has proposed a one-time fixed payment to fund conservation activities for the California red-legged frog to compensate for unavoidable impacts.

Public Availability of Comments

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 in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the Applicant's proposed project would individually and cumulatively have a minor effect on the California red-legged frog and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a "low-effect" ITP 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" ITP is one that would result in (1) minor or nonsignificant 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 reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue the ITP.

Authority

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

Stephen P. Henry,

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Ventura Fish and Wildlife Office,

Ventura, California.

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