



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2023-N055; FXES11140200000-234-FF02ENEH00]

Salt River Project Roosevelt Habitat Conservation Plan Amendment and Draft Environmental Assessment; Maricopa and Gila Counties, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, as the lead Federal agency, in conjunction with the U.S. Army Corps of Engineers, as a cooperating agency, announce the availability of a draft environmental assessment (EA) for the proposed Salt River Project Roosevelt Habitat Conservation Plan (RHCP) Amendment which includes a proposed planned deviation to the Corps' Water Control Manual (WCM) in Gila and Maricopa Counties, Arizona. Salt River Project (applicant) submitted the RHCP amendment, also available for public review, in support of an application for an amended incidental take permit (permit) under the Endangered Species Act. Prepared in accordance with the requirements of the National Environmental Policy Act, the draft EA evaluates the impacts of, and alternatives to, amending the existing permit for the operation of the Modified Roosevelt Dam and Lake. If approved, the requested permit amendment would authorize incidental take of the northern Mexican gartersnake and expand the permit area for existing authorized incidental take for the yellow-billed cuckoo, southwestern willow flycatcher, and bald eagle. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining documents:* You may obtain copies of the RHCP amendment

and draft EA on the internet at <https://www.fws.gov/office/arizona-ecological-services>.

Submitting comments: You may submit written comments by email to incomingazcorr@fws.gov. Please note which document(s) your comment references. For more information, see **Public Availability of Comments**.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, Arizona Ecological Services Office; U.S. Fish and Wildlife Service; telephone (602) 242–0210. 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), as the lead Federal agency, in conjunction with the U.S. Army Corps of Engineers (Corps), as a cooperating agency, announce the availability of a draft environmental assessment (EA) for the proposed Salt River Project Roosevelt Habitat Conservation Plan (RHCP) Amendment in Gila and Maricopa Counties, Arizona. Salt River Project (SRP; applicant) submitted the proposed RHCP amendment in support of an application for an amended incidental take permit (permit) under section 10(a)(1)(B) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). The draft EA evaluates the impacts of, and alternatives to, amending the existing permit for the operation of the Modified Roosevelt Dam and Lake, and addresses both the Service and Corps' responsibilities under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The proposed RHCP amendment is a combined ESA section 10(a)(1)(B) and ESA section 7 approach to ESA compliance for implementation of covered activities for non-Federal (section 10) and Federal (section 7) participants. The RHCP amendment addresses effects from SRP's Modified Roosevelt Dam conservation storage actions to

newly listed species, and adds SRP's flood control operations, which includes a proposed planned deviation to the Corps' Water Control Manual (WCM). The planned deviation to the Corps' WCM, guiding Roosevelt Lake's flood control space (FCS) operations, is a Federal action, as is the Service's approval of an amended permit. The planned deviation, if approved, could extend water's occurrence in the FCS for 100 days (120 days total) in 3 out of 5 consecutive years. SRP's current permit is for 50 years, expiring in 2053, and the amendment does not change the permit duration. If the amendment is approved, the permit would have a remaining duration of 30 years.

If the Service approves the amended RHCP and the Corps approves the planned deviation, the requested permit amendment would authorize incidental take of the northern Mexican gartersnake (*Thamnophis eques megalops*; gartersnake) and expand the permit area for existing authorized incidental take for the federally listed threatened yellow-billed cuckoo (*Coccyzus americanus*; cuckoo), endangered southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher), and unlisted bald eagle (*Haliaeetus leucocephalus*).

SRP and the Service evaluated and improved the incidental take exceedance language for the bald eagle for conservation storage and additional flood control activities, addressing the bald eagle's dynamic distribution and abundance. SRP is amending their existing RHCP under ESA for the bald eagle in case the Service lists the bald eagle as threatened or endangered in the future. We also included the bald eagle to address compliance during the remaining life of the permit under the Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668-668d, 54 Stat. 250, as amended) and its governing regulations at 50 CFR 22.80.

Authorized incidental take of the covered species would result from Modified Roosevelt Dam's conservation storage and flood control activities, including the proposed deviation to the Corps' WCM.

Background

Section 9 of the ESA and its implementing regulations at 50 CFR part 17.21 prohibit the “take” of fish or wildlife species listed as endangered. Additionally, per 50 CFR part 17.31, most of the provisions of 50 CFR part 17.21 for endangered species, including prohibition of “take”, apply to species listed as threatened, provided the species was added to the List of Endangered and Threatened Wildlife on or prior to September 26, 2019. “Take” is defined under the ESA 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. 1532(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. Valid ESA permits under 10(a)(1)(B) constitute a valid permit under the Eagle Act, if the activity is compatible with bald eagle preservation. ESA defines “incidental take” as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits of endangered and threatened species are in 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Proposed Actions

Service’s Proposed Action

The Service’s proposed action involves the issuance of an amended 10(a)(1)(B) permit to SRP in association with SRP’s RHCP Amendment in Maricopa and Gila Counties, Arizona. The RHCP amendment is a combined ESA section 10(a)(1)(B) and ESA section 7 approach to ESA compliance for implementation of covered activities for non-Federal (section 10) and Federal (section 7) participants. SRP’s permit is for 50 years, expiring in 2053, and the amendment does not change the permit duration.

In 2002, SRP developed the original RHCP to address effects to the flycatcher, cuckoo, Yuma Ridgway’s rail (*Rallus obsoletus yumanensis*), and bald eagle resulting from SRP’s conservation storage operations at Modified Roosevelt Dam and Lake. The

2002 RHCP and 2003 permit area address Roosevelt Lake's conservation space (CS), which extends to the reservoir's water surface at elevation 2,151 feet (ft). In February 2003, the Service signed its RHCP record of decision on the environmental impact statement under NEPA, completed a section 7 ESA biological opinion on the issuance of the permit, and issued a permit to SRP.

The proposed RHCP amendment addresses effects from Modified Roosevelt Dam's conservation storage actions to species (gartersnake) listed since completion of the original 2002 RHCP.

SRP is adding flood control operations to the RHCP and its effects to covered species (gartersnake, flycatcher, cuckoo, and bald eagle). Flood control operations include normal flood control operations and a proposed "3 in 5-year planned deviation" to the Corps' WCM.

SRP's RHCP amendment includes and addresses the effects to listed species from the proposed WCM deviation. The proposed planned deviation to the Corps' WCM, which guides Roosevelt Lake's FCS operations is a Federal action, which we fully analyze under NEPA in the draft EA, along with ESA compliance.

As part of the RHCP amendment's proposed action, SRP would implement a gartersnake conservation program for impacts associated with CS, normal FCS activities, and the planned deviation, to achieve a level of conservation benefit that fully offsets the impacts of the anticipated incidental take. SRP's conservation program is integral to meeting the amended RHCP's standard to mitigate to the maximum extent practicable. SRP's conservation program requires actions for the remaining 30-year permit duration. SRP would implement the following gartersnake conservation measures associated with conservation and normal flood control activities: (1) suppression of nonnative predatory fish by electrofishing in two separate sections of lower Tonto Creek downstream of the Town of Gisela; (2) stocking of native fishes in two separate sections of lower Tonto

Creek downstream of the Town of Gisela and the FCS; (3) possible stocking of lowland leopard frogs (*Lithobates yavapaiensis*) in the Gisela section of lower Tonto Creek and the FCS; and (4) potential funding of a lowland leopard frog breeding facility. To offset impacts of gartersnake take from the planned deviation, SRP would stock native fish in the FCS. SRP would monitor and adaptively manage gartersnake conservation measures to achieve effective and efficient conservation.

The proposed RHCP amendment would expand the permit area for cuckoo, flycatcher, and bald eagle to include the FCS. For all three birds, existing RHCP conservation measures are comprehensive enough to fully mitigate effects anticipated for ongoing conservation storage and the additional flood control operations proposed in the RHCP amendment. Therefore, SRP's current existing 2002 permit surrogate and exceedance measures are robust enough to address additional minor effects to the cuckoo and flycatcher from flood control activities.

In the proposed RHCP amendment, SRP and the Service improved the surrogate and exceedance metrics for the bald eagle for ongoing conservation and additional flood control activities to address the bald eagle's dynamic distribution and abundance. Since completion of the original RHCP in 2002, the Service removed the bald eagle from the list of threatened and endangered species. SRP is amending their existing RHCP under ESA for the bald eagle should we list the bald eagle as threatened or endangered in the future. Valid section 10(a)(1)(B) permits under the ESA constitute a valid permit under the Eagle Act, if the activity is compatible with bald eagle preservation. The draft EA includes our analysis under the Eagle Act of the RHCP amendment and conservation actions. Similar to the flycatcher and cuckoo, SRP's existing conservation measures are robust enough to fully mitigate additional minor effects to bald eagles.

SRP's amended RHCP permit, which includes the effects of the Corps' proposed planned deviation, will require ESA section 7 compliance.

Corps' Proposed Action

The Corps is the Federal participant for combined non-Federal (section 10) and Federal (section 7) ESA compliance under section 10(a)(1)(B). The Corps' proposed action is the review of a planned deviation from the WCM, as requested by SRP. SRP addresses the effects to listed species from the proposed planned deviation in the proposed RHCP amendment. SRP's proposed deviation request would extend the maximum acceptable release period for water held within the first five (5) ft of the FCS (elevations 2,151 to 2,156 ft) from 20 days to 120 days. The planned deviation could occur in three years out of a five-consecutive year period and begin immediately, should the Corps approve of the deviation.

The U.S. Government owns Modified Roosevelt Dam, and a 1917 contract between the Secretary of the Interior, SRP, and the Bureau of Reclamation (Reclamation) delegates to SRP the responsibility for the care, operation, and maintenance of Modified Roosevelt Dam.

In 1996, Reclamation, in coordination with SRP, structurally modified Roosevelt Dam to include (1) additional water conservation space (up to elevation 2,151 ft); (2) flood control space (2,151 to 2,175 ft in elevation) to help manage flood releases to reduce downstream flood damage; (3) flood surcharge space to protect the dam from overtopping (Safety of Dams); and (4) new outlet works and spillway.

In 1997, the Corps issued the Water Control Manual for Modified Roosevelt Dam. The Corps, Reclamation, and SRP entered into a water control agreement, determining that SRP would comply with the WCM's flood control operating criteria.

Modified Roosevelt Dam's WCM operational objective is to minimize downstream flood damage along the Salt and Gila Rivers. The WCM identifies operational releases within the FCS to draw down Roosevelt Reservoir within 20 days of initial inundation while working to maintain combined flows at the Salt and Verde River

confluence below 180,000 cubic ft per second.

Modified Roosevelt Dam's WCM identifies when it may be necessary to temporarily deviate from the established flood control plan. Planned deviations are one of three categories identified in the WCM. Regulations and agreements establish the process and requirements for approval of a planned WCM deviation.

National Environmental Policy Act Compliance

Issuance of the RHCP amendment permit is a Federal action that triggers the need for compliance with NEPA. Additionally, as noted above, the proposed RHCP amendment is a combined ESA section 10(a)(1)(B) and ESA section 7 approach to ESA compliance for implementation of covered activities for non-Federal (section 10) and Federal (section 7) participants. In accordance with the requirements of NEPA, we advise the public that:

1. We have prepared a draft EA to evaluate SRP's RHCP amendment, which addresses Modified Roosevelt Dam's effects from conservation storage actions on newly listed species and adds effects to covered species from flood control operations, including the Corps' evaluation of the planned deviation to the WCM, and potential permit issuance. We are accepting comments on the RHCP amendment and draft EA.
2. The applicant, Service, and Corps have developed the RHCP amendment, which describes the measures the applicant has volunteered to take to meet the issuance criteria for a permit associated with the RHCP amendment. The issuance criteria are found at 50 CFR 17.22(b)(2)(i) and 50 CFR 17.32(b)(2).
3. The applicant would implement the RHCP amendment, including its conservation program, and the amended permit would remain effective until the expiration of the RHCP in 2053.
4. As described in the RHCP amendment, anticipated incidental take of the

gartersnake (in the CS, FCS, and lower Tonto Creek), flycatcher, cuckoo, and bald eagle (in the FCS) could result from otherwise lawful activities covered by the RHCP amendment.

Alternatives

As part of this process, we are considering two additional alternatives to the proposed action, the No Action and No Planned Deviation alternatives. Under the No Action Alternative, the Service would not issue the amended permit, and SRP would not implement the RHCP amendment. Under the No Planned Deviation Alternative, the Corps would not approve the planned deviation to the WCM, and SRP would implement the RHCP amendment with the addition of normal flood control activities.

Next Steps

We will evaluate the RHCP amendment permit application, amended RHCP, draft EA, and comments we receive to determine whether the RHCP amendment application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the RHCP amendment and issue the amended permit under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*) to the applicant. We will not make our final decision until after the 30-day comment period ends and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. The Service will handle requests for copies of comments 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 the Service may make your entire comment—including your personal identifying information—

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. The Service will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, 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. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region,

U.S. Fish and Wildlife Service.

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