



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2024-0153; FXES 1113020000-245-FF02ENEH00]

Application for an Enhancement of Survival Permit; Eagle Creek Multi-Species Conservation Benefit Agreement; Greenlee and Graham Counties, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Freeport Minerals, a subsidiary of Freeport-McMoRan Inc., for a 10(a)(1)(A) enhancement of survival permit supported by the proposed *Eagle Creek Multi-Species Conservation Benefit Agreement* (CBA) in Greenlee and Graham Counties, Arizona.

With this notice, we announce the availability for public comment of the permit application, the proposed CBA, and the draft environmental assessment (EA). We invite comments from the public and Federal, Tribal, State, and local governments.

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 materials that we receive, will be available for public inspection online in Docket No. FWS-R2-ES-2024-0153 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 one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R2-ES-2024-0153.
- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS-R2-ES-2024-0153; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls

Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Heather Whitlaw, Field Supervisor, U.S. Fish and Wildlife Service, Phoenix, Arizona, Ecological Services Office; telephone 602–834–7203. 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), make available for public comment an application we received from Freeport Minerals Corporation (applicant) for an enhancement of survival permit (permit) under section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) supported by the CBA in Greenlee and Graham Counties, Arizona, and the associated draft EA. If approved, the requested 50-year permit would authorize incidental take of the spikedace (*Meda fulgida*), loach minnow (*Tiaroga cobitis*), and Gila chub (*Gila intermedia*), which are federally listed as endangered under the ESA, and the narrow-headed gartersnake (*Thamnophis rufipunctatus*), which is federally listed as threatened under the ESA (hereafter collectively referred to as the Covered Species).

The incidental take would be of the Covered Species within the Plan Area of the CBA that results from ongoing and future activities on the applicant’s enrolled property, as fully described in the draft CBA, during the permit term, take associated with conservation and management activities integral to meeting the CBA net conservation benefit standard, as well as take resulting from a return to baseline condition. As described in the CBA, baseline condition has been quantified for each species based on habitat miles or acreage.

During the life of the permit, the applicant’s ongoing and future activities include

improvement, replacement, repair, construction, operation, and maintenance of their facilities and related infrastructure on lands adjacent to Eagle Creek. The CBA would provide a net conservation benefit for the Covered Species through construction of a nonnative fish barrier that will protect 8.4 miles (13.5 kilometers) and approximately 682 acres (276 hectares) of Eagle Creek and immediately surrounding habitat from nonnative species invasion. This mileage and acreage are currently unprotected, and the CBA will increase the suitability of this area for management and recovery of the Covered Species by preventing invasion by detrimental non-native aquatic species. Applicant also proposes an exotic species removal study and native fish monitoring in the CBA that will also provide a net conservation benefit for the Covered Species.

The Service is the lead for the proposed CBA approval and permit issuance. The Bureau of Reclamation (Reclamation) is a cooperating partner and will design, partially fund, construct, and carry out necessary operations and maintenance on the proposed fish barrier. Reclamation is the lead agency for development of the EA under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The EA analyzes both Reclamation and the Service's proposed actions. The Service is a cooperating agency for the NEPA analysis.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. 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. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing such take of endangered and threatened species are found at 50

CFR parts 17.21–22 and 17.31–32, respectively.

Proposed Action

The proposed action involves the issuance of a 10(a)(1)(A) permit to the applicant to authorize incidental take of the Covered Species resulting from implementation of the proposed CBA and the applicant's ongoing and future activities on their lands along Eagle Creek in Greenlee and Graham Counties, Arizona, including take resulting from barrier construction as well as ongoing management activities within the Covered Area but downstream of the proposed fish barrier, as described below.

Both spikedace and loach minnow were listed as threatened in 1986, with their listing status changing to endangered in 2012 (February 23, 2012; 77 FR 10810). Historically, spikedace was found in most rivers and streams in the Gila River Basin upstream of Phoenix, Arizona; however, much of its historic habitat has been destroyed as a result of habitat modification and by the introduction and spread of nonnative predatory and competitive species. Spikedace now remain in approximately 10 percent or less of the species' historical range. Loach minnow were once common throughout much of the Gila River Basin; however, much of its historic habitat has been destroyed through habitat modification and the introduction and spread of nonnative species. Loach minnow now remain in approximately 15 to 20 percent of the species' historical range.

Gila chub was listed as endangered in 2005 (November 2, 2005; 70 FR 66664). Historically, Gila chub were found throughout the Gila River basin in southern Arizona, southwestern New Mexico, and northeastern Sonora, Mexico. Gila chub have been reduced in numbers and distribution through the majority of the historical range. Primary threats to Gila chub include predation and competition with nonnative species and habitat alteration.

Recently, there has been a taxonomic revision of the fish that have historically been classified as Gila chub; based on analyses of genetic and morphological data, the

Gila chub is no longer recognized as a distinct taxonomic entity, but rather is actually within the roundtail chub (*Gila robusta*) species (April 7, 2017; 82 FR 16981). However, at this time, the Gila chub remains listed under the ESA.

The narrow-headed gartersnake was listed as threatened in 2014 (July 8, 2024; 79 FR 38678). Historically, narrow-headed gartersnakes occupied perennial drainages across the Mogollon Rim, from northern and eastern Arizona into southwestern New Mexico. The species remains in relatively dense populations only in the Tularosa River and Middle Fork of the Gila River in New Mexico, and in Oak Creek and West Fork Oak Creek in Arizona. Narrow-headed gartersnakes are believed to persist in other locations; however, information on other populations is less certain due to a lack of adequate survey effort and data. The most significant threat to narrow-headed gartersnake is nonnative species.

The proposed CBA is part of a management plan developed by the applicant in response to the Service's proposed critical habitat designation for spikedace and loach minnow in 2011, which included portions of Eagle Creek and the San Francisco River in Arizona (the designation has since been finalized). The applicant requested that their private lands along Eagle Creek and the San Francisco River in Arizona be excluded from the critical habitat designation because of the conservation commitments in their proposed management plan. Within the management plan, the applicant committed to native fish monitoring, a nonnative species removal study, and investigation and construction of a fish barrier on Eagle Creek, as well as completion of a safe harbor agreement (now called a conservation benefit agreement, or CBA).

The Service accepted the management plan in lieu of designation of the applicant's lands on Eagle Creek and the San Francisco River. Subsequently, costs of barrier construction exceeded those included in the management plan. To allow for project completion, Reclamation entered into a cooperative relationship with the

applicant and the Service to evaluate the financial and technical feasibility of fish barrier construction. Under this partnership, Reclamation became the project lead for the design, construction, operation, and maintenance of the barrier.

The proposed CBA was developed in coordination with the Service. The purpose of the proposed CBA is to implement population restoration activities for spikedace, loach minnow, Gila chub, and narrow-headed gartersnake through construction of a nonnative fish barrier at Eagle Creek. The upper reach of Eagle Creek is a high-value stream for native fish species because of its lack of nonnative species and its favorable hydrological conditions, including water quality and quantity. However, several nonnative species known to be detrimental to native fish communities occur in downstream reaches of Eagle Creek and the Gila River, including smallmouth bass (*Micropterus dolomieu*), channel catfish (*Ictalurus punctatus*), flathead catfish (*Pylodictis olivaris*), yellow bullhead (*Ameiurus natalis*), red shiner (*Cyprinella lutrensis*), and green sunfish (*Lepomis cyanellus*).

Under the CBA, a nonnative fish barrier would be constructed on lands belonging to the applicant to protect upper Eagle Creek against possible future incursions of nonnative aquatic species and allow for augmentation of existing populations. This area is currently not protected against nonnative species invasion. In addition, the applicant would implement conservation measures, including native species monitoring and a nonnative species removal study. Barrier construction will increase the suitability of Eagle Creek for species management and augmentation efforts, which are important to the species' survival and recovery. Invasion of occupied habitats by nonnative species is identified as a primary threat for all four of the covered species. Construction of the barrier and implementation of the proposed conservation and management measures are expected to provide a net conservation benefit to the Covered Species.

Given the current status of the Covered Species in Eagle Creek and below the fish

barrier site, we anticipate incidental take is unlikely to occur. However, if the Covered Species are present, they could be incidentally taken during fish barrier construction and as a consequence of the Permittee's management actions and land and water use activities within the Covered Area. However, the Permittee has agreed to leaving the barrier in place, even should the CBA be discontinued, resulting in continued protection of the area most likely to be occupied by the Covered Species, which will provide long-term protection for the Covered species. The likelihood of incidental take may increase if populations of the Covered Species increase above the fish barrier or if Covered Species are reintroduced and re-establish above the fish barrier in Eagle Creek or in tributaries such as East Eagle Creek. If this reintroduction or re-establishment were to occur, this would create the possibility that individuals of the Covered Species may move or be washed downstream into areas within the Covered Area where the Permittee's facilities and other infrastructure exist. In that event, individuals of the Covered Species could become entrained in the Permittee's water diversion and pumping facilities, resulting in deaths or injuries. We anticipate this type of incidental take, should it occur, will involve small number of individuals, and that the larger number of individuals occupying those portions of Eagle Creek above the barrier will result in a net conservation benefit for the species.

Alternatives

We are considering one alternative to the proposed action as part of this process, the No Action Alternative. Under No Action Alternative, the Service would not issue the permit, the CBA would not be implemented, and the applicant would continue the existing operation and maintenance activities on their properties. The applicant would continue to implement conservation actions within the management plan.

Next Steps

We will evaluate the permit application, CBA, draft EA, and comments we

receive to determine whether the CBA application meets the requirements of the ESA, NEPA, and implementing regulations. If we determine that all requirements are met, we will approve the CBA and issue the permit under section 10(a)(1)(A) of the ESA to the applicant, in accordance with the terms of the CBA 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 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. If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a comment that includes personal identifying information, such as your address, phone number, or email address, 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. Moreover, 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. 4321 *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508 and 43 CFR part 46).

Amy Lueders,
Regional Director, Southwest Region,
U.S. Fish and Wildlife Service.

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