

for species federally listed as endangered or 50 CFR 17.32 (a) for species federally listed as threatened.

A single section 10(a)(1)(A) permit would be issued with separate authorizations, as cited above, for the incidental take of the covered species and for the intentional take of the black-tailed prairie dog. The permit also would contain separate sets of special terms and conditions for each of the two types of take. The permit would become effective upon Federal listing of any of the covered species.

Annual monitoring, required by the Agreement, will be conducted to determine active burrow densities, which can be used as an index of population levels. Recreational shooting will not occur unless monitoring indicates the population threshold has been exceeded. For example, when plague epizootics have reduced the population below established thresholds, all recreational shooting will be suspended, pending the recovery of the population back to threshold levels. Additionally, ongoing monitoring and adaptive management will allow adjustment of management goals and thresholds should new information indicate populations are decreasing or increasing outside the threshold parameters.

Baseline population and habitat conditions for the covered species are described in the Agreement. Annual monitoring is a key component of the Agreement and is one of the requirements for receiving assurances that no further measures would be required of the property owner and that take of any of the covered species, if federally listed, under the permit would continue to be authorized. Adaptive management provides the plan flexibility, if monitoring indicates changes in management are necessary (e.g., threshold levels need to be raised to meet the conservation goals, as fully described in the Agreement).

#### Public Review and Comments

The Service has made a preliminary determination that the proposed Agreement and permit issuance are eligible for categorical exclusion under NEPA. We explain the basis for this determination in an Environmental Action Statement, which also is available for public review at the office listed in the **ADDRESSES** section above.

If you wish to comment on the permit application or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Before including your address, phone number, e-mail 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 review, we cannot guarantee that we will be able to do so.

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations at 40 CFR 1506.6. If we determine that the requirements are met, we will sign the proposed Agreement and issue a permit under section 10(a)(1)(A) of the Act to the Applicants for take of the covered species in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice under section 10(c) of the Act and implementing regulations for NEPA (40 CFR 1506.6).

Dated: May 20, 2008.

**Scott Hicks,**

*Deputy Field Supervisor, Cheyenne, Wyoming.*

[FR Doc. E8-24884 Filed 10-17-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R8-ES-2008-N0262; 81430-1112-0000-F2]**

#### **Proposed Low Effect Habitat Conservation for West Colton Terminal Temporary Ethanol Transloading Facility, City of Rialto, County of San Bernardino, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** West Colton Rail Terminal, LLC (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for a 3-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for “take” of the endangered Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*, “DSF”) associated with construction of an ethanol unloading facility in the City of

Rialto, San Bernardino County, California. A conservation program to mitigate for impacts of the project on the DSF would be implemented as described in the proposed West Colton Terminal Temporary Ethanol Transloading Facility Low-Effect Habitat Conservation Plan (HCP).

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “Low-Effect” Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and the associated Low Effect Screening Form, which are also available for public review.

**DATES:** Written comments should be received on or before November 19, 2008.

**ADDRESSES:** Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, California 92011. Written comments may be sent by facsimile to (760) 918-0638.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: (760) 431-9440.

#### **SUPPLEMENTARY INFORMATION:**

##### **Availability of Documents**

Individuals wishing copies of the proposed HCP and EAS should immediately contact the Service by telephone at (760) 431-9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office [see **ADDRESSES**].

##### **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 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 species. “Incidental take” is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened

and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant (West Colton Rail Terminal, LLC or WCRT) is seeking a permit for take of the Delhi Sands flower-loving fly during the life of the permit. This species is referred to as the "DSF" in the proposed HCP. The DSF is restricted to the Delhi Soils formations within western Riverside and San Bernardino counties in California.

The applicant proposes to construct an ethanol unloading facility on 2.1 acres of land located between the north end of Sycamore Street and South Date Avenue in the City of Rialto, San Bernardino County, California. Approximately 0.21 acre of the project site is considered occupied by the DSF, and we anticipate that all DSF within the 0.21 acre area would be lost during project construction. The purpose of the project is to eliminate truck traffic from local highways currently resulting from trucking the ethanol from the City of Carson to the Colton area gasoline blending terminals. The project will eliminate the over 60-mile truck trip for approximately 40 trucks per day and reduce truck travel to a few thousand yards per load.

The applicant proposes to mitigate impacts to the DSF associated with the covered activities by fully implementing the HCP. The purpose of the proposed HCP's conservation program is to promote biological conservation of the DSF. WCRT proposes to mitigate impacts to DSF by contributing to a habitat management endowment for a conservation parcel known as the "Owl Property", which is located northwest of the intersection of Riverside Avenue and Resource Drive in the City of Rialto. WCRT's contribution will fully fund an endowment for DSF habitat management in perpetuity.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to minimize and mitigate impacts of the project on DSF. Three alternatives to the taking of the listed species under the Proposed Action are considered in the proposed HCP. Under the Original Design Alternative, additional DSF habitat would be impacted at the project site to more efficiently meet the operational goals of the project. Under the Alternate Location Alternative, no DSF habitat would be impacted, but other environmental impacts would be unavoidable. Under the No Action Alternative, no DSF habitat would be

impacted or conserved, and truck traffic would not be reduced.

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM8) and as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the proposed HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Before including your address, phone number, e-mail 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 review, we cannot guarantee that we will be able to do so.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to West Colton Rail Terminal, LLC for the incidental take of the Delhi Sands flower-loving fly from construction of an ethanol unloading facility in the City of Rialto, San Bernardino County, California.

Dated: October 14, 2008.

**Jim A. Bartel,**

*Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R8-ES-2008-0272; 81430-1112-0000-F2]

**Proposed Otay Water District Low Effect Habitat Conservation Plan for the Quino Checkerspot Butterfly and Coastal California Gnatcatcher**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), have received an application from the Otay Water District (Applicant) for a 15-year incidental take permit for two covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for "take" of the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) and the federally threatened coastal California gnatcatcher (*Polioptila californica californica*) associated with the operation and maintenance of the existing recycled water pipeline (the Otay Force Main) and its access road. A conservation program to mitigate for the project activities would be implemented by the Applicant as described in the Otay Water District Low Effect Habitat Conservation Plan for the Quino Checkerspot Butterfly and Coastal California Gnatcatcher (HCP), which would be implemented by the Applicant.

We are requesting comments on the HCP and our preliminary determination that the proposed plan qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and Low Effect Screening Form (Screening Form), which is also available for public review.

**DATES:** Written comments should be received on or before November 19, 2008.

**ADDRESSES:** Comments should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011. Written comments may be sent by facsimile to (760) 431-5901.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone (760) 431-9440.