

subsequent 15-day period to March 3, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230-0002, and in the "Reading Room" section of the Board's Web site, which is accessible via <http://www.trade.gov/ftz>. For further information, contact Christopher Kemp at [Christopher.Kemp@trade.gov](mailto:Christopher.Kemp@trade.gov) or (202) 482-0862.

Dated: December 11, 2009.

**Andrew McGilvray**,  
Executive Secretary.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XT22

#### Habitat Conservation Plan for the Santa Clara Valley Water District's Operations and Maintenance Activities in the Coyote Creek, Guadalupe River, and Stevens Creek Watersheds, Santa Clara County, California

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Department of Commerce.

**ACTION:** Revised notice of intent (NOI) to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), NMFS is issuing a revised notice to advise the public of our intent, in coordination with the Santa Clara Valley Water District (District), to conduct public scoping necessary to gather information to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The EIS/EIR will analyze the environmental effects of the proposed issuance of 50-year incidental take permits under the Federal Endangered Species Act of 1973, as amended, (ESA), for a Habitat Conservation Plan (HCP) within a portion of the Coyote Creek, Guadalupe River, and Stevens Creek watersheds (Three Creeks) and proposed modifications of the District's appropriative water rights by the State Water Resources Control Board (SWRCB) to settle litigation against the District concerning alleged impacts of

its operations on fish, wildlife, water quality and other beneficial uses. The first NOI to prepare an EIS/EIR was published in the **Federal Register** on August 4, 2005, but since that time changes to the scope of the proposed action have occurred. NMFS provides this notice to (1) describe revisions to the proposed action; (2) describe Federal lead and cooperating agency roles; (3) update other Federal and State agencies and the public of the revised scope of the environmental review for this EIS/EIR; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

**DATES:** Written comments concerning the revised scope of the HCP and its associated environmental analysis should be received on or before January 19, 2010.

**ADDRESSES:** Send written comments to Gary Stern, San Francisco Bay Region Supervisor, National Marine Fisheries Service, Santa Rosa Area Office, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404, facsimile (707) 578-3435; or via e-mail to [ThreeCreeks.HCPSWR@noaa.gov](mailto:ThreeCreeks.HCPSWR@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Gary Stern, National Marine Fisheries Service at the address shown above or at (707) 575-6060.

#### SUPPLEMENTARY INFORMATION:

##### Background

As the primary water management agency for Santa Clara County, California, the District has constructed and currently operates and maintains a system of local reservoirs, flood control channels, groundwater recharge facilities, and water conveyance facilities in the Santa Clara Valley, and serves an area of approximately 1,300 sq mi (3,367 sq km) with a population of 1.8 million. It acts as the county's water wholesaler and flood protection agency, serving as the steward for the streams and creeks, underground aquifers and District-built reservoirs within the County.

On July 11, 1996, a complaint was filed against the District alleging that its operations on the Three Creeks were adversely affecting fish and their habitat. In an effort to settle the complaint the District initiated the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE). The FAHCE process culminated successfully in the Draft Settlement Agreement (DSA). In order to adopt and implement the DSA and pursue regulatory certainty of its existing and future water supplies, the District seeks an incidental take permit that would provide long-term

assurances for the reliability of water supplies.

On August 4, 2005, the NMFS issued an NOI to prepare an EIS/EIR for the environmental effects of NMFS' issuance of an incidental take permit under the ESA to the District for the Three Creeks HCP. A public scoping meeting was held on August 9, 2005, in San Jose, California. Public and agency comments were received during the scoping meeting and written comments were received through September 15, 2005.

In 2005, activities covered by the proposed HCP were limited to on-going operations and maintenance of eight existing dams and reservoirs in the Guadalupe River, Coyote Creek, and Stevens Creek watershed. As described in the original NOI, the DSA is proposed to occur in three 10-year phases to achieve the overall goal of restoring and maintaining healthy steelhead and salmon populations as appropriate to each of the three watersheds. As set forth in more detail in the original NOI, DSA Phase 1 activities include, but are not limited to: (1) Re-operation of reservoirs in accordance with specified criteria for flood releases, fish passage, fish rearing, and other non-emergency operations and maintenance; (2) removal or remediation of Priority 1 District-owned barriers to fish passage and up to 50 percent cost sharing to remove or remediate Priority 1 barriers owned by others; (3) construction of fish habitat enhancement structures and other restoration actions in the three watersheds; (4) implementation actions to restore geomorphic functions as necessary for channel maintenance or formation in the three watersheds; and (5) development and adoption of general guidelines, applying environmentally sensitive techniques, to maintain or enhance geomorphic functions, riparian conditions and bank stabilization projects undertaken by other persons.

DSA Phase 2 activities include: (1) Extension of the distribution of suitable habitat for salmon and steelhead in Coyote Creek and Guadalupe River watersheds, as feasible; (2) relocation of the Coyote Percolation Facility to a site off-stream; (3) removal or remediation of Priority 2 barriers owned by the District; (4) use of recycled or other urban water to augment flows in Coyote Creek and Guadalupe River, as feasible; (5) implementation of a trap and truck operation to relocate adult steelhead above existing dams in the Three Creeks watersheds and to assist in smolt out-migration; (6) construction of a bypass channel or other modification necessary to isolate Alamitos Creek and Guadalupe River from Lake Almaden;

and (7) removal or modification of Almaden Reservoir to allow for unimpeded access of anadromous fish to upper watershed habitat. DSA Phase 3 activities include all those measures not implemented in Phase 2, but needed to achieve the overall management objectives.

### Revisions to Project/Proposed Action

Since the DSA was developed in 2003, and the NOI was published on August 5, 2005, on-going evaluations of dam safety by the District, in coordination with the California Division of Safety of Dams (DSOD), have determined that (a) reservoir storage may need to be reduced to provide an appropriate margin of safety during anticipated earthquakes (b) major repairs could be needed at all reservoirs over the 50-year life of the HCP, and (c) safety retrofits would likely be required at one or more dams to ensure seismic stability of the dams and reservoirs. As a result of these evaluations, the District has proposed to expand the scope of Covered Activities in the HCP to include non-routine repair and maintenance activities at dams associated with dam and reservoir safety. Proposed Covered Activities have been revised to include the following additional activities in the Three Creeks HCP: (1) reservoir operations associated seismic safety evaluations and resulting interim storage restrictions developed by SCVWD and DSOD; (2) temporary dam operations during major maintenance and repair of District facilities that require dewatering of a reservoir; (3) routine and corrective dam and reservoir maintenance including on-going inspections, maintenance, repairs, and rehabilitation of dams and associated facilities; (4) dam safety retrofits that include upstream and/or downstream embankment strengthening (embankment and buttress methods); (5) the operation and maintenance of recharge facilities; and (6) conservation program measures that include a suite of habitat enhancement and restoration activities.

In addition to the expansion of Covered Activities, proposed Covered Species in the HCP has been expanded to 22 species (Covered Species), including 8 federally listed threatened or endangered species and 14 unlisted species that may become listed during the term of the permits. The 8 federally listed species are: the threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*); threatened California red-legged frog (*Rana aurora draytonii*), threatened California tiger salamander (*Ambystoma californiense*); threatened

central California coast steelhead (*Oncorhynchus mykiss*); endangered least Bell's vireo (*Vireo bellii pusillus*); endangered coyote ceanothus (*Ceanothus ferrisae*); endangered Santa Clara Valley dudleya (*Dudleya setchellii*); and endangered Metcalf Canyon jewelflower (*Caulanthus californicus*). The 14 unlisted species proposed for coverage are the foothill yellow-legged frog (*Rana boylei*); western pond turtle (*Clemmys (=Actinemys) marmorata marmorata* and *C. (=Actinemys) m. pallida*); Pacific lamprey (*Lampetra tridentata*); Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*); tricolored blackbird (*Agelaius tricolor*); fragrant fritillary (*Fritillaria liliacea*); most beautiful jewelflower (*Streptanthus alba ssp. peramoenus*); big scale balsamroot (*Balsamorhiza macrolepis var macrolepis*); Mount Hamilton thistle (*Cirsium fontinale var. campylon*); San Francisco collinsia (*Collinsia multicolor*); Loma Prieta hoita (*Hoita strobilina*); smooth lessengia (*Lessingia micradenia var. glabrata*); Hall's bush mallow (*Malacothamnus hallii*); and western leatherwood (*Dirca occidentalis*). Species may be added or deleted during the course of proposed HCP development based on further analysis, new information, agency consultation, and public comment. NMFS has authority to include listed Central California Coast steelhead and unlisted Central Valley fall-run Chinook salmon in the District's incidental take permit.

### Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. To assist in determining whether this project would cause significant impacts that would result in the preparation of an EIS refer to 40 CFR 1508.27 or 40 CFR 1508.2. These sections provide information on how to determine whether effects are significant under NEPA and, therefore, would trigger the preparation of an EIS. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the NMFS environmental review. Alternatives considered for analysis in an environmental document may include: variations in the scope of covered activities; variations in the location, amount, and type of conservation; variations in permit duration; or, a combination of these elements. The EIS/EIR will consider the proposed action, the issuance of section 10(a)(1)(B) permits under the ESA, and several

alternatives, representing varying levels of conservation, impacts from covered activities, the list of covered species, or a combination of these factors. Additionally, a No Action alternative will be included. Under the No Action alternative, NMFS would not issue Section 10(a)(1)(B) permits. In addition, the EIS/EIR will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomic, and other environmental resources that could occur with the implementation of the proposed actions and alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS/EIR.

The primary purpose of the scoping process is for the public to assist the NMFS and the District in developing the EIS/EIR by identifying important issues and alternatives related to the proposed action. NMFS invites comments from all interested parties regarding the proposed expansion of Covered Activities and Covered Species. NMFS requests that comments be as specific as possible. In particular, we request information regarding: (1) The direct, indirect, and cumulative impacts that implementation of the proposed HCP with the expanded Covered Activities could have on endangered and threatened and other covered species, and their communities and habitats; (2) other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; (3) funding issues; (4) existing environmental conditions in the HCP area; (5) other plans or projects that might be relevant to this proposed project; and (6) minimization and mitigation efforts.

Comments will only be accepted in written form. You may submit written comments by mail, electronic mail to NMFS, facsimile transmission, or in person (see **ADDRESSES**). 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.

Dated: December 14, 2009.

### Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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