

Billing Code 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2010-N003]

[80221-1112-0000-F2]

Southeastern Lincoln County Habitat Conservation Plan, Lincoln County, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final environmental impact statement and habitat conservation plan.

SUMMARY: Under the National Environmental Policy Act (NEPA), we, the Fish and Wildlife Service (Service), advise the public of the availability of the final Environmental Impact Statement (EIS) on the applications from Lincoln County, City of Caliente, and Union Pacific Railroad (UPRR) for three section 10(a)(1)(B) incidental take permits under the Endangered Species Act of 1973, as amended (Act).

We also announce the availability of the Southeastern Lincoln County Habitat Conservation Plan (SLCHCP), which the three applicants have submitted with their incidental take permit applications and Implementing Agreement (IA). If issued, the permits would authorize incidental take of the threatened desert tortoise (*Gopherus agassizii*) and the endangered southwestern willow flycatcher (*Empidonax traillii extimus*). The permits are needed because incidental take of these listed species could occur during proposed land development activities (including land use conversion from agriculture or grazing to urban development), flood control activities (within the City of Caliente), maintenance of Lincoln County roads and right-of-ways, UPRR activities, and/or conversion of grazing land to irrigated/cultivated agricultural land, on approximately 31,000 acres of private and local government property in southeastern Lincoln County, Nevada.

DATES: A Record of Decision will be signed no sooner than 30 days after the publication of the Environmental Protection Agency (EPA) notice of the Final EIS in the *Federal Register*. We must receive any comments by 5 p.m. on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Submit comments to Robert D. Williams, State Supervisor, by U.S. mail at Nevada Fish and Wildlife Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130; by telephone at (702) 515-5230; or by fax at (702) 515-5231.

FOR FURTHER INFORMATION CONTACT: Jeri Krueger, Habitat Conservation Planning Coordinator, at the address or telephone or fax numbers above.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may download copies of the SLCHCP, EIS, and IA from the Nevada Fish and Wildlife Office web site at: <http://www.fws.gov/nevada/es/hcp.html>. Alternatively, you may contact us by telephone or visit during regular business hours to ask us how to obtain copies (see **FOR FURTHER INFORMATION CONTACT**).

In addition, copies of all documents are available at the following library locations:

- (1) Clark County Library, 1401 E. Flamingo Road, Las Vegas, NV 89119; (702) 507-3400;
- (2) Washoe County Library, Downtown Main Branch, 301 South Center Street, Reno, NV 89501; (775) 327-8300;
- (3) Mesquite Library, 121 West First North Street, Mesquite, NV 89027; (702) 346-5224;
- (4) Alamo Branch Library, 100 N. First Street, Alamo, NV 89001; (775) 725-3343;
- (5) Lincoln County Library, 100 Depot Avenue, Caliente, NV 89008; (775) 726-3104;
- and
- (6) Lincoln County Library, 63 Main Street, Pioche, NV 89043; (775) 962-5244.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the “take” of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538(a)(1)(B)). The

term “take” means 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 (19)). We have further defined “harm” to mean significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue permits to authorize incidental take of listed fish or wildlife (i.e., “take” that is incidental to, and not the purpose of, otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively. If we issue permits, the applicants would receive assurances for all species covered by the permits in accordance with our “No Surprises” regulations at 50 CFR 17.22(b)(5) and 17.32 (b)(5) for all species covered by the permits.

The EIS analyzes the impacts of the proposed implementation of the SLCHCP by the applicants. The applicants are seeking permits for the incidental take of desert tortoise and southwestern willow flycatcher for a term of 30 years. Incidental take of these species may occur on approximately 31,000 acres of habitat for the tortoise and the flycatcher within the SLCHCP planning area (covered area). The covered activities may result in the loss of up to 20,000 acres of desert tortoise habitat and up to 85 acres of southwestern willow flycatcher habitat during the term of the permit. The covered area includes the non-Federal lands on which the covered activities would occur, and Federal lands administered by the Bureau of Land Management (BLM) on which most of the mitigation would occur. The BLM, as a participant in the SLCHCP, would be responsible for reviewing and, if appropriate, authorizing the implementation of mitigation measures on BLM-administered land.

Proposed covered activities include: (1) Planned land development and maintenance activities (including land use conversion from agriculture or grazing to urban development), (2) utility and infrastructure development and maintenance activities, (3) flood control activities within the City of Caliente, (4) Lincoln County roadway construction and maintenance activities, (5) UPRR activities, and (6) land conversion activities (e.g., conversion of grazing land to irrigated/cultivated agricultural land).

The SLCHCP's proposed conservation strategy is designed to minimize and mitigate the impacts of incidental take of the covered species resulting from covered activities, to maintain stable or increasing desert tortoise populations in the covered area, and to achieve no net loss of suitable southwestern willow flycatcher habitat within the covered area. The SLCHCP provides a mechanism to supply funding for a full range of conservation measures targeting desert tortoise, southwestern willow flycatcher, and the ecosystems that support them. Conservation measures proposed for the desert tortoise as part of the SLCHCP include pre-construction surveys, initiating and sustaining a desert tortoise "Head Start" program, translocation of desert tortoises, research on the ecological implications of fire to species' habitats, restoration of burned desert tortoise habitat areas, and public outreach and education. To minimize and mitigate the loss of suitable flycatcher habitat along the Meadow Valley Wash and Clover Creek resulting from the covered activities, UPRR and the City of Caliente will provide the funding necessary to create additional suitable flycatcher habitat or enhance the functional value of potentially suitable existing flycatcher habitat at a ratio of 2 acres for every 1 acre of native habitat removed, or at a ratio of 1 acre for every acre of non-native habitat removed. Private landowners with property located along these two waterways may volunteer to participate in the SLCHCP by signing a participation agreement provided by Lincoln County that would extend take authorization under

Lincoln County's permit to the participating landowner, provided the landowner agrees to implement the minimization and mitigation measures in the SLCHCP.

National Environmental Policy Act Compliance

Our proposal to issue incidental take permits is a Federal action that triggers the need for compliance with NEPA. Accordingly, as the Federal agency responsible for compliance under NEPA, we have prepared an EIS that analyzes alternatives associated with issuance of the incidental take permits. In addition to the permit issuance alternative, other alternatives we considered in the EIS include the "No Action" alternative (we would not issue the incidental take permits, "take" of the desert tortoise and southwestern willow flycatcher would not be authorized, and the SLCHCP would not be implemented), and "Alternative A, Additional Lands for Development" (we would issue incidental take permits for development and associated activities on up to 44,135 acres of private lands within the covered area as well as BLM land proposed for disposal over the next 30 years in the southeastern portion of Lincoln County).

The final EIS includes all comments we received on the draft EIS and our responses to those comments. After the 30-day waiting period, we will complete a Record of Decision that announces our decision on the action that will be implemented and discusses all factors leading to the decision.

Public Involvement

We published a notice of intent to prepare an EIS for this project in the *Federal Register* on July 5, 2001 (66 FR 35451), and held public workshops on June 25 and 26, 2001, in Alamo and Caliente. We held additional public workshops on July 5 and 6, 2006, in Caliente, Alamo,

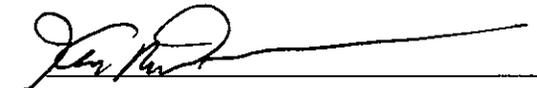
and Mesquite to update members of the public on the status of the SLCHCP. On December 5, 2008, we published a notice of availability of the draft SLCHCP, draft EIS, and draft IA in the *Federal Register* (73 FR 74185). The draft documents were available for a 75-day public comment period ending on February 11, 2009.

Public Review

Copies of the final EIS, SLCHCP, and IA are available for review (see **Availability of Documents**). Any comments we receive will become part of the administrative record and may be available to the public. Before submitting comments that include your address, phone number, e-mail address, or other personal identifying information, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may 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 the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the Act. A permit decision will be made no sooner than 30 days after the publication of the EPA's final EIS notice in the *Federal Register* and completion of the Record of Decision.

Dated: _____



Ken McDermond
Deputy Regional Director
Pacific Southwest Region
Sacramento, California