



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
P.O. Box 1306, Room 6034
Albuquerque, New Mexico 87103



In Reply Refer To:
FWS/R2/ES-TE/054474
72923A-0

JUN 21 2013

Memorandum

To: Regional Director, Southwest Region

Through: Deputy Regional Director, Southwest Region

From: Assistant Regional Director, Ecological Services, Region 2

Subject: Findings and Recommendation on Issuance of an Endangered Species Act Section 10(a)(1)(A) Enhancement of Survival Permit to Vermejo Park Ranch associated with a Candidate Conservation Agreement with Assurances to Conserve the Rio Grande Cutthroat Trout in the States of New Mexico and Colorado

The U.S. Fish and Wildlife Service (Service) has worked with Vermejo Park Ranch, New Mexico Department of Game and Fish (NMDGF), and Colorado Division of Parks and Wildlife (CDPW) on the development of a Candidate Conservation Agreement with Assurances (CCAA) for the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) in the States of New Mexico and Colorado, and on the necessary Service documents associated with the accompanying Enhancement of Survival Permit (Permit) application. The Rio Grande cutthroat trout is a species of trout endemic to the southern Rocky Mountains of the United States that currently is a candidate for listing as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Vermejo Park Ranch and the Service are the parties to the CCAA, with NMDGF and CDPW as cooperating agencies; the CCAA has a 25-year duration. The Permit is a necessary component for implementation of the CCAA, and the Service concurs that the application and proposed CCAA meet the regulatory and statutory standards required for issuance of the requested Permit. The CCAA, Environmental Assessment (EA) developed pursuant to the National Environmental Policy Act (NEPA), and an Intra-Service Section 7 Conference Opinion developed pursuant to section 7 of the Act were reviewed by Service personnel at the Regional Office in Albuquerque.

I. DESCRIPTION OF PROPOSAL:

Vermejo Park Ranch submitted an application to the Service for a Permit under section 10(a)(1)(A) of the Act. The Permit would support the CCAA for the Rio Grande cutthroat trout within Taos County, New Mexico, and Costilla County, Colorado. The primary objectives of the CCAA are:

(1) conserve, restore, and/or enhance Rio Grande cutthroat trout populations, (2) reduce threats to existing populations of Rio Grande cutthroat trout, and (3) to reestablish populations of Rio Grande cutthroat trout within the covered area. Implementation of the CCAA for the Rio Grande cutthroat trout is expected to eliminate or significantly reduce threats to the species such that, if implemented on all necessary properties, it could preclude the need to list the species. The CCAA will also continue the successful cooperative pre-listing recovery efforts for the Rio Grande cutthroat trout that have been accomplished to date throughout its range in New Mexico and Colorado through conservation actions that would not otherwise be required through the Act. The term of this CCAA is 25 years. The term of the Permit begins on the date a final rule that lists the Rio Grande cutthroat trout as threatened or endangered becomes effective and continues through the end of the CCAA term. With the issuance of the Permit, the Service will provide assurances to Vermejo Park Ranch that no additional conservation measures would be required beyond those specified in the CCAA should the species become listed in the future, so long as Vermejo Park Ranch implements and maintains the conservation measures specified in the CCAA in good faith throughout the duration of the Permit.

The CCAA is expected to serve as a vehicle to remove or reduce threats on Vermejo Park Ranch. The conservation measures in the CCAA to be implemented or maintained are intended to conserve, restore, and/or enhance Rio Grande cutthroat trout populations so sustainable population levels are maintained. The CCAA for the Rio Grande cutthroat trout in New Mexico and Colorado is likely to serve as a model of cooperative conservation efforts that may facilitate the development of additional CCAAs within the historic range of the Rio Grande cutthroat trout in New Mexico and Colorado. The Permit would authorize incidental take associated with implementation of conservation measures described in the CCAA and existing land uses and other covered activities on Vermejo Park Ranch. Although the Permit would be issued upon entering the CCAA, the Permit would not become effective until a listing of the Rio Grande cutthroat trout becomes effective.

The Service has analyzed the potential impact of the CCAA on the human environment and has concluded in its NEPA analysis that there will be no individual or cumulative significant effects on the environment caused by this action. The Service recommends Permit issuance based on the adequacy of the CCAA as measured against the Service's final CCAA policy (63 FR 32726) and the benefits to the Rio Grande cutthroat trout that are expected to be achieved through implementation of conservation measures and provisions contained in the CCAA.

II. PUBLIC COMMENTS

The Service published a Notice of Availability of the draft CCAA, draft EA, and receipt of the Permit application to allow the incidental take of the candidate Rio Grande cutthroat trout by Vermejo Park Ranch in the Federal Register on January 25, 2013 (78 FR 5480). The Service received no comments during the public comment period.

III. ISSUANCE CRITERIA-ANALYSIS AND FINDINGS

The Applicant has met all application requirements for the Permit. In addition, the applicant has met all issuance criteria for the Permit contained in 50 CFR 17.22(d)(1) and 17.32(d)(1). These criteria are detailed below.

Enhancement of Survival Permit

The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA.

The Service finds that the potential take of Rio Grande cutthroat trout is incidental to otherwise lawful activities. Vermejo Park Ranch will implement the CCAA and participating landowner activities will include implementation of conservation commitments and measures described in the CCAA and land uses on the enrolled properties. Incidental take authorized under the Permit would be in the form of harassment, harm, and mortality associated with the conservation measures. Ongoing land use activities (agriculture, recreational fishing) are not expected to result in take.

- 1) The CCAA complies with the requirements of the CCAA policy.

Vermejo Park Ranch has developed the CCAA and Permit application pursuant to the requirements in the implementing regulations and the issuance criteria for a Permit. Conservation benefits for the Rio Grande cutthroat trout from implementation of the CCAA are expected in the form of avoidance of negative impacts, reduction of threats, and conservation, enhancement, and/or restoration of populations in Taos County, New Mexico, and Costilla County, Colorado. In addition, this CCAA may be used as a model for CCAAs in other parts of the Rio Grande cutthroat trout's range to encourage cooperative management and conservation. It is also assumed that if these conservation measures were implemented on other necessary properties, it would preclude or remove the need to list the Rio Grande cutthroat trout.

- 2) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of the survival and recovery in the wild of any species.

The Act's legislative history establishes the intent of Congress that this issuance criteria be identical to a regulatory finding of no "jeopardy" under section 7 (a)(2) of the Act. As a result, issuance of this Section 10(a)(1)(A) Permit was reviewed by the Service according to provisions of Section 7 of the Act. In the Intra-Service Section 7 Conference Opinion, the Service concludes that issuance of a Permit will not jeopardize the continued existence of the Rio Grande cutthroat trout or any other species. The taking associated with the implementation of the CCAA will be incidental to efforts associated with implementation of the conservation measures for Rio Grande cutthroat trout in their historic range and gathering important biological information necessary to continue conservation efforts for the species.

- 3) Implementation of the terms of the CCAA is consistent with applicable Federal, state, and tribal laws and regulations.

The Service is unaware of any law or regulation that would prevent the implementation of the CCAA, and the accompanying Permit. The Permit will include conditions that revoke the take provisions of the Permit if any applicable state, Federal or tribal law or regulation is broken.

- 4) Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for species covered by the permit.

The CCAA in New Mexico and Colorado for the Rio Grande cutthroat trout furthers ongoing conservation activities for the species' conservation and is essential to developing additional conservation agreements within the historic range of the Rio Grande cutthroat trout. Additionally, similar conservation measures to those in the CCAA are being implemented throughout the species' range in New Mexico and Colorado on public land to improve the Rio Grande cutthroat trout's conservation status rangewide.

- 5) The Applicant has shown capability for and commitment to implementing all of the terms of the CCAA.

Vermejo Park Ranch has shown the ability to fund and implement conservation commitments in the CCAA. Many of the conservation commitments in the CCAA have already begun on Vermejo Park Ranch and have been successful. Vermejo Park Ranch has shown the capability and willingness to implement the measures throughout the term of the CCAA. Vermejo Park Ranch will also have assistance from NMDGF, CDPW, and the Service in determining the conservation priorities. Vermejo Park Ranch has committed significant resources to the Rio Grande cutthroat trout in the past decade and will continue to use those resources to implement the CCAA. Based on conservation measures described in the CCAA, the Service does not expect any circumstances to occur that would preclude Vermejo Park Ranch's funding and implementation of the CCAA.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS-ANALYSIS AND FINDINGS

The Service has no evidence that the Permit application should be denied on the basis of criteria and conditions set forth in 50 CFR, 13.21 (b-c). Vermejo Park Ranch has met the criteria for the issuance of the permit and does not have any disqualifying factors that would prevent the Permit from being issued under current regulations.

V. RECOMMENDATIONS ON ISSUANCE OF PERMIT

Based on our findings with respect to the Permit application, CCAA, and conference opinion, the issuance of a Section 10(a)(1)(A) enhancement of survival Permit to Vermejo Park Ranch is recommended.

Concur:

Joy E. Nikolopoulos
 ACTING Regional Director, Southwest Region

Date:

JUN 21 2013