

SECTION 8, CHANGED CIRCUMSTANCES AND PLAN IMPLEMENTATION

8. CHANGED CIRCUMSTANCES AND PLAN IMPLEMENTATION

8.1 CHANGED CIRCUMSTANCES

“Changed circumstances” are defined under the Federal “No Surprises Rule” at 50 CFR 17.3 as “changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by plan or agreement developers and the [U.S. Fish and Wildlife Service (USFWS)] and that can be planned for.” Changed circumstances potentially affecting the Covered Lands are defined as future events for which it is reasonably foreseeable that such an event may occur during the life of the Incidental Take Permit (ITP), and that may negatively affect the Covered Species and/or their associated habitat within the Covered Lands. Changed circumstances addressed by the Tehachapi Uplands Multiple Species Habitat Conservation Plan (TU MSHCP) include the following:

- Drought/climate change
- Fire/climate change
- New listings of species/designation of critical habitat not covered by the TU MSHCP.

8.1.1 DROUGHT/CLIMATE CHANGE

For the purpose of defining changed circumstances, drought is defined as climatic drought at least 3 years in length, as declared by the California Department of Water Resources.

Risk Assessment

Drought is a cyclical weather phenomenon that is beyond human control. Some forecasters predict that the cycle of drought has become and may be more frequent in the future due to climate change. Drought is not uncommon in Southern California, and it is a phenomenon to which local natural communities and species have adapted over time. Drought occurs slowly over a multiyear period, differing from the catastrophic events of fire and flood, which occur rapidly and afford little time for preparing for disaster response. Drought, in combination with other stressors, such as fire, can have an adverse effect on habitat quality for Covered Species. Drought is an expected occurrence in Southern California, and measures will be taken to monitor the effects of drought, as defined above, on Covered Species, especially since the frequency of drought may increase due to climate change.

Preventive Measures

No measures are available to prevent climatic drought within the Covered Lands. Measures to ameliorate the effects of drought may involve providing artificial water sources for Covered Species adversely affected by drought.

Planned Response to Drought

If a climatic drought occurs within the TU MSHCP Covered Lands as defined by this section, the Permittees will notify USFWS of this changed circumstance, or USFWS may notify the Permittees. The Permittees will ensure that the damage caused by the drought is assessed and ensure initiation of the following actions:

- Prepare a damage assessment report.
- Recommend actions to ameliorate the effects of the climatic drought on Covered Species; such actions may include provision of temporary artificial water sources, such as wildlife guzzlers, for the benefit of Covered Species adversely affected by drought. In addition, elements of fuel management plans associated with Covered Activities that address wildfire management may be implemented to address adverse effects on Covered Species due to drought either by minimizing the risk of wildfire or by contributing to recovery from wildfire.
- Implement measures through Adaptive Management, which could include focused implementation of elements of minimization and mitigation measures incorporated in the TU MSHCP, including the grazing management plan and the integrated pest management plan.

8.1.2 FIRE/CLIMATE CHANGE

Fires have historically occurred, and will continue to occur, naturally within Covered Lands. For the purpose of defining changed circumstances, fire frequency is an appropriate metric to consider. Short-interval return fires (those occurring with greater frequency in the same location than indicated by historic records) are regarded as a changed circumstance.

Risk Assessment

Wildland fire is a natural occurrence within Covered Lands, and vegetation communities within Covered Lands are adapted to fire. The frequency of fire within Covered Lands may increase due to increased human presence associated with Covered Activities as well as due to drought associated with climate change.

Preventive Measures

For specific types of fire that are damaging to biological resources within the Covered Lands, the cause of the fire will be reviewed and preventive measures such as the following will be developed:

- Redesign, reconfigure, and/or review fuel breaks
- Work with local fire agencies to improve fire suppression preparedness

- Develop a public education program
- Contact firefighting authorities to identify appropriate strategies to fight fires to minimize habitat damage.

Planned Response to Fire

If an increase in fire frequency occurs within the Covered Lands as defined above, the Permittees will notify USFWS of this changed circumstance, or USFWS may notify the Permittees. The Permittees will ensure that the damage caused by the fire is assessed and will ensure initiation of the following actions:

- Develop and implement a monitoring program to monitor natural re-growth within the damaged area for an appropriate period
- If it is determined that natural re-growth is not occurring and that such absence of natural re-growth will adversely affect Covered Species, an action plan will be developed and implemented; the action plan will involve efforts to improve habitat conditions, including potentially reseeded burned areas with native plant species
- Implement response measures through Adaptive Management.

8.1.3 NEW LISTINGS OF SPECIES/DESIGNATION OF CRITICAL HABITAT NOT COVERED BY THE TU MSHCP

USFWS may list additional species under the Federal Endangered Species Act (FESA) as threatened or endangered, delist species that are currently listed, or declare listed species as extinct or designate new critical habitat. In the event of a new listing of one or more species not covered by the TU MSHCP, or designation of new critical habitat on the Covered Lands, USFWS and the Permittee(s) will identify actions that may cause take, jeopardy, or adverse modification of critical habitat, and the Permittee will avoid such actions in the implementation of its Covered Activities until approval of an amendment to the TU MSHCP to address the newly listed species has been obtained in accordance with the modifications and amendments procedures described in Section 8.4, Amendments. Such avoidance measures will include the following:

- Evaluation of applications for Covered Activities with respect to potential effects on the newly listed species or newly designated critical habitat; such evaluations will include assessment of the presence of suitable habitat for the newly listed species within the areas potentially affected by the proposed Covered Activity and surveys for the newly listed species, as appropriate, using accepted protocols.
- Implementation of measures to avoid impacts to the newly listed species and/or adverse modification to critical habitat based on the results of the data collected in the previous

item and the evaluation of those data in the context of the design of the proposed Covered Activity.

- If a new species that is not covered by the TU MSHCP but that may be affected by Covered Activities is listed under FESA during the term of the ITP, it will be reevaluated by USFWS and the Covered Activities may be modified, as necessary, to ensure that the activities covered under the TU MSHCP are not likely to jeopardize or result in the take of the newly listed species or cause adverse modification of any newly designated critical habitat. The Permittees shall implement the modifications to the Covered Activities identified by USFWS as necessary to avoid the likelihood of jeopardy to or take of the newly listed species or adverse modification of newly designated critical habitat. The Permittees shall continue to implement such modifications until such time as the Permittee has applied for and USFWS has approved an amendment of the ITP, in accordance with applicable statutory and regulatory requirements, to cover the newly listed species or until USFWS notifies the Permittees in writing that the modifications to the Covered Activities are no longer required to avoid the likelihood of jeopardy of the newly listed species or adverse modification of newly designated critical habitat.

8.2 UNFORESEEN CIRCUMSTANCES

Unforeseen circumstances are defined in 50 CFR 17.3 as changes in circumstances that affect a species or geographic area covered by the TU MSHCP that could not reasonably be anticipated by Permittees and USFWS at the time of the TU MSHCP's negotiation and development, and that result in a substantial and adverse change in status of the Covered Species. The purpose of the "No Surprises Rule" is to provide assurances to non-Federal landowners participating in habitat conservation planning under FESA that no additional land restrictions or financial compensation beyond that provided under the conservation plan will be required for species adequately covered by a properly implemented TU MSHCP, in light of unforeseen circumstances, without the consent of the Permittee.

In case of an unforeseen event, the Permittee shall immediately notify USFWS staff who have functioned as or remain the principal contacts for the proposed action. In determining whether such an event constitutes an unforeseen circumstance, USFWS shall consider, but not be limited to, the following factors: size of the current range of the affected species; percentage of range adversely affected by the TU MSHCP; percentage of range conserved by the TU MSHCP; ecological significance of that portion of the range affected by the TU MSHCP; level of knowledge about the affected species and the degree of specificity of the species' conservation program under the TU MSHCP; and whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

If USFWS determines that additional conservation and mitigation measures are necessary to respond to the unforeseen circumstances where the TU MSHCP is being properly implemented,

the additional measures required of the Permittee must be as close as possible to the terms of the original TU MSHCP and must be limited to modifications within any conserved habitat area or to adjustments within lands or waters that are already set aside in the TU MSHCP's operating conservation program. Additional conservation and mitigation measures shall involve the commitment of additional land or financial compensation or restrictions on the use of land or other natural resources otherwise available for development or use under original terms of the TU MSHCP only with the consent of the Permittee.

8.3 RECONCILIATION OF THE 'NO SURPRISES RULE,' UNFORESEEN CIRCUMSTANCES, AND ADAPTIVE MANAGEMENT IN THE TU MSHCP

The "No Surprises Rule" states, in part, that in negotiating unforeseen circumstances, USFWS shall not require, without the consent of the Permittee, the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan (50 CFR 17.32(b)(5)(iii)(A)).

If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, USFWS may require additional measures of the Permittee where the conservation plan is being properly implemented, but only if such measures are limited to modifications within open space or to the conservation plan's operating conservation program for the affected species, and maintain the original terms of the conservation plan to the maximum extent possible. Additional conservation and mitigation measures shall not involve the commitment of additional land, water, or financial compensation or restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the Permittee (50 CFR 17.32(b)(5)(iii)(B)).

Thus, in the event that unforeseen circumstances adversely affect any of the Covered Species during the life of the TU MSHCP, the Permittee would not be required to provide additional financial compensation, land, or land restrictions beyond those required by the TU MSHCP at the time of issuance of the ITP without its consent. This prohibition does not, however, affect the requirements for responding to changed circumstances as described in Section 8.1.

In light of the TU MSHCP's Adaptive Management Program, which allows certain changes to occur throughout the life of the TU MSHCP, it is necessary to clarify which aspects of the conservation program are subject to the "No Surprises Rule" and for which, therefore, USFWS may not require additional mitigation as a result of unforeseen circumstances without the consent of the Permittee. The Adaptive Management Program allows the TU MSHCP to be revised as a result of new information on the life history or ecology of Covered Species generated through continuing research or information on the effectiveness of mitigation measures, and as a result of the monitoring programs. This would not constitute additional mitigation as a result of

unforeseen circumstances. As noted in *Section 7, Conservation Plan for Other Covered Species*, of this TU MSHCP, depending on specific adaptive management measures implemented, adaptive management measures may require minor modification to the TU MSHCP.

8.4 AMENDMENTS

8.4.1 MINOR MODIFICATIONS

Minor modifications are changes that do not affect the scope of the TU MSHCP's impact and conservation strategy, change amount of take, add new species, or change significantly the boundaries of the TU MSHCP. Examples of minor modifications include correction of spelling errors or minor corrections in boundary descriptions. The Implementing Agreement, included as *Appendix C*, describes the process for approving minor modifications to the plan.

8.4.2 AMENDMENTS

Amendments to the TU MSHCP are changes other than minor modifications and will require an ITP amendment.

8.5 SUSPENSION/REVOCATION

The Implementing Agreement, included as *Appendix C*, describes the process for suspension/revocation of the ITP.

8.6 RENEWAL OF THE SECTION 10(A)(1)(B) PERMIT

The Implementing Agreement, included as *Appendix C*, describes the process for renewal of the ITP.

8.7 PERMIT TRANSFER

The Implementing Agreement, included as *Appendix C*, describes the process for transfer of the ITP.

8.8 OTHER MEASURES AS REQUIRED BY DIRECTOR

The Implementing Agreement, included as *Appendix C* to the TU MSHCP, further specifies the roles and responsibilities that have been developed to ensure compliance with the permit. In the event of a direct conflict between the TU MSHCP and the Implementing Agreement, the Implementing Agreement overrides.