



# Monterey County

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## Board Report

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October 17, 2016

**Introduced:** 10/9/2016

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** WR General Agenda

Consider receiving an update on the status of the Salinas Valley Water Project Biological Opinion and future need for a Habitat Conservation Plan; and, provide direction to Staff.

### RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Directors:

Receive an update on the status of the Salinas Valley Water Project Biological Opinion and future need for a Habitat Conservation Plan.

### SUMMARY/DISCUSSION:

On June 2, 2016 The Otter Project submitted a "Sixty-Day Notice of intent to Sue for Endangered Species Act and Clean Water Act Violations in Relation to the Salinas Valley Water Project" (Notice). On August 5, 2016, the US Army Corps of Engineers (Corps) reinstated section 7 consultation, pursuant to the Endangered Species Act (ESA) of 1973, regarding construction activities associated with the Department of the Army Clean Water Act section 404 Permit No. 24976S for the Salinas Valley Water Project (SVWP).

On November 27, 2007 the Monterey County Water Resources Agency (Agency) received Department of the Army Clean Water Act section 404 Permit No. 24976S for the SVWP. The components parts of the 404 permit include a section 401 Certification from the California Central Coast Regional Water Quality Control Board and two Biological Opinions (BO) - one from the National Marine Fisheries Service (NMFS) and one from the U.S. Fish and Wildlife Service (USFW). Both of these BOs were initiated and issued under section 7 of the ESA. Section 7 of the ESA requires any Federal agency to insure that its action is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of habitat of such species. In the case of the SVWP, a federal Corps permit was needed; thereby a section 7 consultation with USFW and NMFS was initiated and completed.

Subsequent to a Notice sent to the Corps, NMFS and the Agency by the Otter Project, the Corps has reinitiated the section 7 process for "construction activities". NMFS staff has indicated that it is possible that a new BO with a limited duration will be issued and that BO be replaced with a Habitat Conservation Plan (HCP) within a reasonable timeframe (3 years). The Otter Project has since in effect vacated its Notice.

In the 1982 amendments to the ESA, a provision in section 10 was established that allows for "incidental take" of endangered or threatened species by non-Federal entities. Incidental take is defined by the ESA as take that is "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." Take, as defined by the ESA, means "to harass, harm, pursue, hunt,

shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” In order for a permit to be issued under section 10 a habitat conservation plan (HCP) must be submitted to NMFS by the applicant (Agency) that specifies:

- i. the impact which will likely result from such taking
- ii. what steps the applicant will take to minimize and mitigate such impacts and the funding that will be available to implement such steps;
- iii. what alternative actions to such taking the application considered and the reasons why such alternatives are not being utilized; and
- iv. such other measures that may be required as being necessary or appropriate for purposes of the plan.

What isn't clear at this time is if a HCP is developed what Agency projects/programs would/should it include and should it cover the species regulated by USFW as well as NMFS.

Agency programs and projects that could potentially be permitted under a HCP include:

1. Facility operations and maintenance
  - a. San Antonio reservoir
  - b. Nacimiento reservoir
  - c. Salinas River Diversion Facility
  - d. Slide gate at the Old Salinas River
2. Salinas River Stream Maintenance Program
3. Interlake Tunnel operations
4. Salinas River Sandbar Management

#### OTHER AGENCY INVOLVEMENT:

On October 5, 2016, Monterey County Water Resources Agency Planning Committee approved this item for consideration by the full Board of Directors.

#### FINANCING:

To be determined.

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