



# Monterey County

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Report

Legistar File Number: WRAG 17-148

June 19, 2017

**Introduced:** 6/8/2017

**Version:** 1

**Current Status:** Agenda Ready

**Matter Type:** WR General Agenda

Consider receiving an update on the status of the Salinas Valley Water Project Biological Opinion and need for a Habitat Conservation Plan; and, direct staff to begin HCP development

### 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 need for a Habitat Conservation Plan; and, direct staff to begin HCP development.

### 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 the 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 process of re-initiation calls for the Agency to submit a new project description to the Corps. Agency and NMFS staffs have met regularly since October 2016 to determine how to best update the project description and proceed with the re-initiation. This process will extend "take" coverage for a short timeframe, currently expected to be 3 years.

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 specify:

- 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.

The attached “Proposed Strategies for Habitat Conservation Plan Development” takes a closer look at some of the Agency’s functions in context of continued ESA compliance as well as the facilities, operations and species that could be included in the development of an HCP.

OTHER AGENCY INVOLVEMENT:

None

FINANCING:

There is no impact to the Agency’s FY 2016-17 Budget. However, the Agency is working on a 4th Reimbursement and Funding Agreement with the County to pay for a portion of the HCP related to the Interlake Tunnel, Reservoir, and SRDF Operations.

Prepared by: Elizabeth Krafft, Senior Hydrologist, (831) 755-4860  
Robert Johnson, Deputy General Manager, (831) 755-4860

Approved by: \_\_\_\_\_  
David E. Chardavoyne, General Manager, (831) 755-4860

Attachment:  
Proposed Strategies for Habitat Conservation Plan Development