

**U.S. FISH AND WILDLIFE SERVICE,
NATIONAL MARINE FISHERIES SERVICE,
AND
MONTEREY COUNTY WATER RESOURCES AGENCY
SALINAS RIVER HABITAT CONSERVATION PLAN
CHARTER**

I. INTRODUCTION

Monterey County Water Resources Agency (MCWRA) proposes to develop a habitat conservation plan (HCP) and apply for incidental take permits (ITPs) for certain species listed under the Endangered Species Act (ESA) and for identified species that may become listed in the future. The HCP is intended to support the proposed issuance of ITPs for federally threatened and endangered species regulated by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS; collectively, *Services*). The ITPs would provide take coverage to MCWRA for the various projects and activities associated with the long-term management of the Salinas River and other waterways in Monterey County.

The purpose of the HCP is to describe the anticipated effects of the proposed covered activities on federally listed species and specify how the impacts can be minimized and mitigated to the maximum extent practicable. MCWRA intends to develop an HCP that would generate an overall net benefit to the affected species, if feasible. The HCP and associated ITPs offer regulatory certainty to project proponents and “No Surprises Assurances” that no additional requirements beyond those agreed to in the HCP and associated ITPs will be required if unforeseen circumstances arise.

The MCWRA and *Services* (collectively, *Parties*) will work together in good faith and cooperation to achieve the purposes and goals provided in the following provisions of this Charter.

II. PURPOSE

This document sets forth the goals and responsibilities of the Parties and procedures that will lead to collaboration on HCP development, independence on National Environmental Policy Act (NEPA) document development, and effective and efficient preparation of the HCP and NEPA document.

III. AUTHORITY

The *Services* have principal trust responsibility for the conservation and protection of threatened and endangered species under the ESA. Section 10 of the ESA, 16 U.S.C. § 1539, establishes a program whereby persons seeking to pursue activities that otherwise could create liability for unlawful take of federally protected species may receive an ITP, which

protects them from such liability. To obtain an ITP, the applicant must submit an HCP that meets all the permit issuance criteria (*id.* §§ 1539(a)(1)(B), 1539(a)(2)(A)). Once the Services have determined that the applicant has satisfied these and other statutory criteria, they shall each issue an ITP consistent with Services' respective regulations governing HCPs and ITPs (50 C.F.R. §§ 17.22(b)(1), 17.32(b)(1), 222.307).

IV. BACKGROUND

MCWRA is a flood control and water agency whose mission and approach to water management balances water supply, flood protection, and environmental conservation. MCWRA owns and operates a range of flood control, water supply, groundwater augmentation, and hydroelectric facilities in Monterey County and northern San Luis Obispo County. For example, MCWRA manages flood and stormwater through its operations at the Nacimiento and San Antonio Dams, conserves such waters through percolation and storage, monitors groundwater extraction, and supports groundwater recharge of the Salinas Valley.

One of MCWRA's highest priorities is water conservation operations, implemented primarily by maximizing the amount of groundwater recharge into the Salinas Valley aquifers. This is largely achieved through timely reservoir releases and a reduction in groundwater pumping through the operation of the Salinas River Diversion Facility (SRDF). Management of Nacimiento and San Antonio Dams is primarily focused on the regulated release of water from those reservoirs to maintain Salinas River streamflow to maximize groundwater recharge through the streambed, operate the SRDF, and provide flows for federally listed South-Central California Coast Steelhead (*Oncorhynchus mykiss*). MCWRA also operates both Nacimiento and San Antonio Dams to provide recreation opportunities in the reservoirs to the extent compatible with release requirements and constraints. When making reservoir releases, however, MCWRA must consider established agreements and permits with other agencies, while still meeting the primary goals of groundwater recharge, SRDF operation, and flows for steelhead.

HCPs and their incidental take permits are a durable mechanism to provide take coverage to non-federal entities for the incidental take of federally listed species. An HCP can be developed in a comprehensive and flexible manner to address long-term regulatory needs. HCPs may also streamline permitting for projects with a federal nexus that require a Section 7 consultation. The U.S. Army Corps of Engineers has determined that the Clean Water Act Section 404 permit issued for construction of Phase I of the Salinas Valley Water Project (SVWP) did not cover ongoing operations (i.e., releases of water) of MCWRA's two reservoirs. Therefore, MCWRA is preparing a comprehensive, long-term HCP to cover impacts to federally listed species associated with reservoir and SRDF operations. Other potential covered activities could include MCWRA-led projects including construction and operation of the proposed Interlake Tunnel project; dam and spillway retrofit (both San Antonio and Nacimiento) to comply with safety upgrade requirements; repair and/or replacement of existing flood management infrastructure (e.g., Old Salinas River slide gate, Potrero Road tide gates); on-going facility operation and maintenance; covered species monitoring;

habitat enhancement (including changes to the current flow prescription and improved water quality); and habitat restoration. The HCP may cover other activities over which MCWRA has discretionary authority that are conducted by private landowners or by organizations that partner with MCWRA to help achieve common goals.

The facilities that would be covered under the HCP lie primarily within Monterey County, with some located in northern San Luis Obispo County. Facilities are located along approximately 118 river miles of the Salinas River (67% of the total length of the Salinas River) and within the Gabilan/Tembladero Slough watershed, which drains to the Old Salinas River channel. When all watersheds draining to this portion of the Salinas River—including Nacimiento, San Antonio, and Arroyo Seco—and the Old Salinas River are considered, the geographic area is over 1,740,000 acres in size.

V. GOALS

A. The goals of the HCP include, but are not limited to, the following:

1. Identify long-term solutions for management of the Salinas River that include flood reduction, water resource management, stream maintenance, and habitat management for threatened and endangered species.
2. Provide an efficient, effective, and landscape-scale approach to permitting and conservation of listed species in the anticipated HCP plan area.
3. Implement the 2019 Salinas River Long-Term Management Plan where applicable and appropriate.
4. Provide a framework to support landowner regulatory compliance for projects along the Salinas River that improve water and aquatic resource management.
5. Balance species conservation with human water needs, while maintaining compliance with the Endangered Species Act.
6. Support and incorporate sound scientific research and analysis during HCP development and implementation.
7. Preserve and support the agricultural economy and economic growth in the Salinas Valley compatible with covered species conservation.
8. Integrate the conservation strategies of the HCP with public and private potential partners wherever possible.
9. Provide an open public process in developing and implementing the HCP.
10. Provide a basis for the MCWRA to obtain endangered species permits for public projects including those associated with uninterrupted water supply, flood protection, conservation, and recreation.

VI. SCHEDULE

The proposed approach for maintaining the schedule for HCP development is:

- A. Strive to complete the HCP and NEPA documents within 3 years of MCWRA securing funding, assuming no interruption in MCWRA's funding.
- B. Make timely progress on all aspects of the HCP and NEPA documents to maintain momentum, ensure uninterrupted funding, and demonstrate commitment to decision makers, stakeholders, and the public.
- C. Set realistic yet aggressive milestones and deadlines in order to maintain momentum.
- D. Adhere to reasonable review periods as long as each Party has agreed in advance to those timelines.
- E. Maintain and update a clear project schedule.

VII. ENVIRONMENTAL DOCUMENT

The proposed issuance of ITPs is a federal action that is subject to the requirements of the National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321 et seq. The Services must comply with NEPA and related rules and policies, including both the Council on Environmental Quality (CEQ), Department of the Interior (DOI; for USFWS), and U.S. Department of Commerce (for NMFS) regulations for implementing NEPA, 40 C.F.R. Parts 1500-1508, 43 C.F.R. Part 46, and NOAA Administrative Order (NAO) 216-6A, respectively. All of this information will serve to inform the decision-making officials and the public.

While NMFS and USFWS are each considering issuance of an ITP, only one agency will accept the role of lead agency for NEPA document development. The Services have agreed that NMFS will be the NEPA lead agency, consistent with CEQ regulations. USFWS will be a Cooperating Agency and may adopt the NEPA document for their decision making. The Services will work together to determine the appropriate level of NEPA documentation for the HCP and ITPs.

The NEPA document will be developed by a third-party contractor (Contractor) for the Services. MCWRA has agreed to pay for the preparation of the NEPA document by the Contractor. Although the Contractor will be funded by MCWRA, the NEPA document will be prepared under the direct supervision and control of the Services. The Services recognize that they will not be involved in any way in the financial decisions related to the contract with the Contractor. A separate Statement of Responsibilities will be developed, once the Contractor is confirmed by the Services, that will outline roles and responsibilities between the Services, MCWRA, and the Contractor.

VIII. RESPONSIBILITIES

- A. Services Responsibilities. Once MCWRA has secured funding for HCP development, the Services shall:

1. Designate a project manager from NMFS and USFWS who will each act as the point of contact for MCWRA and the Contractor.
2. Commit to support development of the HCP by providing technical assistance to MCWRA and providing timely reviews of all relevant material including draft HCP chapters and appendices, as resources allow.
3. Determine and allocate the appropriate personnel to both coordinate the development of the NEPA document and ensure NEPA adequacy and compliance.
4. Prepare a Statement of Responsibilities, which outlines roles and responsibilities, including appropriate lines of communication, between MCWRA, the Services, and the Contractor.
5. Provide the sole direction and oversight of the work of the Contractor in the preparation of the NEPA document to ensure compliance with the requirements of ESA, NEPA, and other applicable federal laws, regulations, and policies.
6. Be responsible for the preparation and issuance of all federal notices and publications as required.
7. Conduct public scoping meetings, with the assistance of MCWRA and the Contractor, as required, to solicit information, concerns, and issues to be considered for the proposed action, development of potential alternatives, and considerations in the NEPA document analyses.
8. Independently evaluate all information, environmental data, and analyses submitted by the Contractor, MCWRA, or others, and revise or request additional studies and analyses to be performed, as necessary and as consistent with the pre-approved NEPA budget, to comply with ESA and NEPA and applicable implementing regulations, and other applicable federal laws and regulations.
9. Conduct meetings, as necessary and resources allow, with the Contractor to review the progress of the NEPA document and provide updates to MCWRA.
10. At the Services' discretion, determine whether MCWRA should review or contribute to the content of the NEPA document. The Contractor shall neither include nor solicit MCWRA in the review, discussion, or development of the content absent an explicit request or approval by the Services, and the Contractor and MCWRA may not meet or discuss content of the NEPA document absent the Services' participation.
11. Make the final determination on the inclusion or exclusion of material in all instances involving questions as to the content or relevance of any material

(including all data, analyses, and conclusions) in the NEPA document, in accordance with federal laws and regulations.

12. Receive all comments during the Draft NEPA document review period and identify issues and comments submitted that will require the Services' independent response in the Final NEPA document. The Services shall direct those comments to the Contractor for the initial preparation of proposed responses and may furnish MCWRA with copies of all comments received. The Services may also request input from MCWRA on those public comments received that relate to its project description or application materials. The Services shall review and may modify the responses, as appropriate.
13. Maintain confidentiality of all information, documents, and materials used in the development of the ITP, HCP, and NEPA document to the extent permitted by the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Services' policies, legal decisions, related regulations, and any other applicable federal laws. The Services will protect from disclosure those portions of records reasonably claimed by MCWRA at the time of their submission to be "confidential business information" to the fullest extent permitted by FOIA and related DOC/DOI regulations, 15 C.F.R Part 4, Subpart A ; 43 C.F.R. Part 2. If the Services disagree with MCWRA whether information is confidential or proprietary under FOIA, the Services will provide MCWRA with written notice in advance of release of that information as required under the DOC/DOI FOIA regulations.

B. MCWRA Responsibilities. MCWRA shall:

1. Designate an MCWRA representative who will act as the point of contact for the Services and the contractor hired by MCWRA to lead the development of the HCP (the HCP Contractor).
2. Determine and allocate the appropriate personnel to coordinate the thorough development of the HCP, in accordance with all applicable federal, state, and local laws and regulations.
3. Develop first drafts of HCP chapters and supporting material and provide to the Services for review and discussion in a stepwise approach that fosters collaboration throughout HCP development.
4. Work with the Services to confirm that the existing Third-Party Consultant Agreement to prepare the draft and final NEPA document and Associated Habitat Conservation Plan for a NEPA Contractor is consistent with the terms of this Charter.
5. Provide to the Services a written and full description of MCWRA's proposed covered activities, an application for an ITP, and a complete habitat conservation plan to facilitate preparation of the description of the proposed

action for NEPA compliance and required minimization, mitigation, and monitoring measures to be included as part of the proposed action.

6. At the request of the Services, provide relevant technical or environmental information to the Services for its evaluation and use in the preparation of the NEPA document. Nothing in this Charter affects MCWRA's right to submit comments to the Services on the draft NEPA document or final NEPA document during their respective public comment periods.
7. If requested by the Services, review and provide comments on NEPA documents and provide other data, as necessary, in a timely fashion.
8. Provide advice, assistance, and support at public scoping meetings as requested by the Services.
9. Attend meetings for, and participate in the development of avoidance, minimization, and mitigation measures for the NEPA document, as requested by the Services.
10. Provide support in responding to public comments on the HCP, draft NEPA document, final NEPA document, and related documents as requested by the Services.
11. Respond to requests for information from the Services as soon as possible. The Services must request information directly from MCWRA, the Contractor cannot make these requests on behalf of the Services.
12. MCWRA will work to secure federal, state, and other available funding to assist with the development and implementation (16 U.S.C. § 1539 (a)(2)(B)(iii)) of the HCP.

IX. COMMUNICATION AND COOPERATION

- A. The Parties shall appoint and maintain designated representatives as the primary contact for actions relating to the preparation of the HCP and NEPA document. Notice to any such representative shall constitute notice to that Party. Representatives, at the time of Charter signature, are:
 1. National Marine Fisheries Service: William Stevens, Natural Resource Management Specialist
 2. U.S. Fish and Wildlife Service: Leilani Takano, Assistant Field Supervisor
 3. MCWRA: Elizabeth Krafft, Deputy General Manager
- B. The Parties shall provide maximum cooperation between and among the Services, MCWRA, and the Contractor in order to fulfill the requirements of the Charter in a timely manner.
- C. Meetings.

1. The Services will notify the Contractor in advance of meetings between the Services, MCWRA, other federal agencies, or other groups, which are intended to discuss significant aspects of the NEPA document. The Contractor will be permitted to attend and participate in any such meetings, but will not be obligated to do so, except to the extent the Services direct the Contractor's participation.
 2. MCWRA will be given notice of any significant meetings between the Services and the Contractor. At the request of the Services, MCWRA may be invited to attend meetings. If MCWRA is unable to attend or is not invited to participate, either the Services or the Contractor will provide MCWRA with a written summary of the meeting and its results. Such written summary will become part of the administrative record. MCWRA may also attend any public meeting regarding the NEPA document.
 3. Joint meetings between the Services, MCWRA, and the Contractor may be held to coordinate financial issues, progress reports, or to discuss information needs that arise during the preparation of the NEPA document.
 4. When significant meetings or conversations between the Services and the Contractor occur, the Services will direct the Contractor to provide the Services written documentation of such meetings or conversations. Such written documentation will become part of the administrative record.
- D. MCWRA and the Contractor may communicate directly without participation by the Services only regarding matters pertaining to the administration of MCWRA's contract with the Contractor for the preparation of the NEPA document, such as billing or payment issues; these meetings should not address the substance of the NEPA document.
- E. MCWRA will provide the Services any written communications that the Contractor may need pertinent to the NEPA document. The Services will then provide the Contractor with the information. MCWRA may not directly provide the Contractor with information pertinent to the NEPA document. The Services will, to the extent allowable, provide MCWRA with a copy of their written communications with the Contractor pertinent to the NEPA document and/or the HCP.

X. ADMINISTRATIVE PROVISIONS

A. Applicable Law.

The Parties agree to comply with all applicable laws governing activities under this Charter. The Parties acknowledge that any information furnished to the Services under this agreement is subject to the FOIA.

B. Commencement and Expiration.

This Charter shall take effect upon the signature of the Parties. Unless terminated in accordance with paragraph D of this Section, this Charter shall expire 60 days after the issuance of the last ITP by either USFWS or NMFS.

C. Modification and Amendment.

This Charter may be modified or amended in writing by the mutual agreement of the Parties.

D. Termination.

This Charter may be terminated by any party upon giving 30-day advance written notice to the other Parties of its intention. During that 30-day period, the Parties agree to actively attempt to resolve any outstanding issues or disagreements.

E. Establishment of Responsibility.

This Charter is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

Agency actions are subject to statutory authority and regulatory requirements. Nothing in this Charter is intended to expand or limit the legal authority or responsibilities of any signatory agency, entity or organization.

F. Non-Fund-Obligating Document.

Nothing in this Charter shall obligate the Services to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property will require execution of separate agreements and must be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This Charter does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

Nothing herein alters the existing authorities or responsibilities of any party nor shall be considered as obligating any party in the expenditure of funds or the future payment of money or providing services. The expressions of support by state and federal agencies under this Charter are subject to the requirements of the federal Anti-Deficiency Act and to the availability of appropriated funds. The parties acknowledge that this Charter does not require any agency to expend its appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

G. Limitations.

In executing this Charter and taking any other action contemplated hereby, MCWRA reserves the right to contest, in any administrative or judicial proceedings, any and all decisions concerning issues in the NEPA document or any other federal requirements related to the proposed project. MCWRA recognizes that nothing in this Charter commits the Services to permit the project or otherwise take action favorable to MCWRA upon all or any part of the proposal.

The CEQ is proposing to update its regulations for implementing the procedural provisions of NEPA (85 Fed. Reg. 7 [January 20, 2020]). If the CEQ regulations are revised, certain provisions of this Charter may be reviewed and revised.

This Charter is not intended to, and does not, create any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, any officers or employees thereof, or any other person.

H. Effective Date.

This Charter shall become effective when signed by all Parties.

The Parties will participate in good faith in a cooperative process consistent with this Charter.

NATIONAL MARINE FISHERIES SERVICE

By: _____
Name: _____
Title: _____
Date: _____

U.S. FISH AND WILDLIFE SERVICE

By: _____
Name: _____
Title: _____
Date: _____

MONTEREY COUNTY WATER RESOURCES AGENCY

By: _____
Name: _____
Title: _____
Date: _____