



Legislation Details (With Board Report)

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On agenda: 5/20/2024 **Final action:**
Title: Consider recommending that the Monterey County Water Resources Agency Board of Supervisors adopt the Salinas River Lagoon and Sandbar Management Low Effect Habitat Conservation Plan (LEHCP) and associated Incidental Take Permit PER8656461; and authorize the General Manager to implement the LEHCP. (Staff Presenting: Jason Demers)

Sponsors:

Indexes:

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Attachments: 1. Board Report, 2. Salinas Lagoon and Sandbar Mgmt LEHCP, 3. USFWS Cover Letter, 4. Federal Permit ESPER8656461, 5. Board Order

Date	Ver.	Action By	Action	Result
5/20/2024	1	Water Resources Agency Board of Directors		

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RECOMMENDATION:

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

Recommend that the Monterey County Water Resources Agency Board of Supervisors adopt the Salinas River Lagoon and Sandbar Management Low Effect Habitat Conservation Plan (LEHCP) and associated Incidental Take Permit PER8656461; and authorize the General Manager to implement the LEHCP.

SUMMARY/DISCUSSION:

Like many central California coastal river systems, the Salinas River is not hydrologically connected to the Pacific Ocean for much of the year. A naturally occurring sandbar forms at the river mouth during periods of low streamflow, creating the Salinas River Lagoon (Lagoon). Over the course of the year the sandbar can build up to an elevation that is significantly higher than typical dry season Lagoon stage. When winter storms once again create natural streamflow in the Salinas River, stream discharge becomes trapped behind the sandbar in the Lagoon. Because of the height of the sandbar, the Lagoon has the potential to flood low lying farmland and homes before overtopping the sandbar and flowing to the ocean.

The Monterey County Water Resources Agency (Agency) performs sandbar management on an emergency basis to prevent flooding around the Lagoon. Sandbar management is required in most years, including the past winter of 2023-24. Sandbar management has the potential to result in the incidental take of federally listed endangered and threatened species in and around the Lagoon.

In 1997, the Agency developed the Salinas River Lagoon Management and Enhancement Plan which provided

analysis and recommendations for Lagoon and sandbar management. In 2018, the Agency developed the Salinas River Lagoon Sandbar Management Plan Project Description (a project description for an updated sandbar management plan that has yet to be developed) and the Salinas River Sandbar Management Monitoring and Reporting Plan to address concerns related to sandbar management activities conducted for flood prevention. The plans define criteria for managing the sandbar elevation for flood prevention and define actions to minimize the impact to sensitive species in and around the Lagoon. The existing plans provide guidance for sandbar management activities, but do not constitute a current sandbar management plan or the necessary permits to protect the Agency from incidental take under the Endangered Species Act (ESA).

The Salinas River Operations Habitat Conservation Plan (SROHCP), which is currently under development, will address these issues and serve as the basis for the Agency to apply for an incidental take permit (ITP) from the U.S. Fish and Wildlife Service (USFWS) under the ESA. Because of the multi-year timeline for development of the SROHCP, the USFWS strongly encouraged the Agency to pursue a short-term solution to obtain an ITP for sandbar management activities while the SROHCP is being developed.

To meet the short-term need for an ITP, Agency staff worked closely with the USFWS to develop this Low Effect HCP to cover flood prevention sandbar management activities until the SROHCP can be completed. Because of significant overlap between the LEHCP and the analysis that had been started for the larger SROHCP, as well as reduced regulatory requirements for LEHCPs, the LEHCP was completed on a much shorter timeline and at a much lower cost than development of a full HCP.

Specifically, the Agency is seeking a 5-year incidental take permit, under section 10(a)(1)(B) of ESA, for take of the federally endangered tidewater goby and federally threatened western snowy plover incidental to periodic sandbar management to facilitate breaching of the Salinas River Lagoon. The LEHCP also addresses effects to the federally threatened Monterey spineflower. The purpose of the proposed activities is to limit water levels in the Salinas River Lagoon during storm events to prevent or minimize flooding of adjacent agricultural lands and residences.

A public draft LEHCP was submitted to the USFWS in March 2023 for review. Following its internal review process, the LEHCP was published in the Federal Register for a 30-day public comment period beginning June 4, 2023. USFWS and Agency staff reviewed comments and made revisions to the LEHCP as needed. The USFWS approved the final ITP and LEHCP on March 28, 2024.

The LEHCP and associated ITP will provide incidental take authorization of three covered species (tidewater goby, western snowy plover, and Monterey spineflower) from activities described in the LEHCP related to the management of the Salinas River Lagoon and sandbar.

Covered activities include operation of the Old Salinas River slidegate for Lagoon water level management and the actions related to the facilitated breach of the sandbar at the mouth of the Lagoon for the purpose of preventing or alleviating flooding.

To prevent or offset impacts to covered species, the LEHCP analyzes potential impacts of the covered activities to the covered species and identifies biological goals and objectives for each species. Conservation measures including avoidance and minimization measures (AMMs) are then proposed to meet the biological goals and objectives.

The LEHCP includes AMMs, such as advance notification, pre-activity species surveys, biological monitoring during sandbar management activities, photo documentation and reporting, and a number of best management practices. To offset impacts that cannot be avoided, the LEHCP includes mitigation measures for each species.

Mitigation measures in the LEHCP include additional monitoring of breaching effects on tidewater goby, directed research to provide a better understanding of the local distribution and life history of goby, a contribution to support California State Parks breeding season habitat management and public outreach programs related to western snowy plover, botanical surveys, invasive plant removal on one acre of Monterey spineflower habitat on Salinas River State Beach property, and compliance monitoring of these actions.

ENVIRONMENTAL REVIEW:

The action presented in this report is the adoption of the Salinas River Lagoon and Sandbar Management Low Effect Habitat Conservation Plan and associated Incidental Take Permit PER865646. The primary activity covered by the LEHCP and ITP is the continued management of the Salinas River Lagoon sandbar to prevent or alleviate flooding of agricultural land, residences, and other properties surrounding the Salinas River Lagoon. This activity was previously analyzed under the 2002 Mitigated Negative Declaration for the Salinas River Mouth Breaching Program (MND), State Clearinghouse Number 2002069052.

Section 15162 of the CEQA guidelines (*Cal. Code Regs. tit. 14 § 15162*) states in relevant part:

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
 - (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
 - (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
 - (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Put simply, under CEQA Guideline section 15162(a), no additional environmental document needs to be prepared for an approved project unless: substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous negative declaration due to the involvement of new significant environmental effects. Here, the Agency finds that implementation of the LEHCP and ITP will not result in substantial changes to the continued activities, or significant effects related to the covered activities or species previously analyzed. Although two species have been identified that were not analyzed in the previous MND (tidewater goby and Monterey spineflower), the action being considered is the adoption of the LEHCP and associated ITP which include avoidance and minimization measures as well as

mitigation actions that prevent significant impacts to all the covered species. Specifically, the Agency will continue to avoid impacts to these species, plus contribute to ongoing efforts to improve conditions for these species, so there is no new significant impact or increase in the severity of a previously identified impact. Also, the action the Agency is taking is not providing any new discretionary approval to perform sandbar management and breaching, it is simply to accept the ITP and implement the permit terms and conditions.

This is further supported by the Low-Effect Incidental Take Permit Determination and National Environmental Policy Act (NEPA) Environmental Action Statement (EAS) that was prepared for the LEHCP by the USFWS. The EAS concluded that the effects of the project on the tidewater goby, western snowy plover, and Monterey spineflower are both minor and negligible because the effects would be temporary, affect a small number of individuals, and the covered activities have not previously been observed to harm the covered species. The EAS goes on to state that effects of the LEHCP are minor or negligible on other components of the human environment, public safety, and natural resources as well.

It is the Agency's determination that the adoption of the LEHCP and ITP does not meet any of the conditions in Section 15162 requiring preparation of a subsequent environmental document and that no further documentation is needed.

STRATEGIC PLAN:

Development of the Salinas River Lagoon and Sandbar Management LEHCP supports Strategic Plan Goal D by pursuing a necessary permit for the core function of flood prevention through Salinas River Lagoon sandbar management; Goal B by performing analysis in conjunction with the Salinas River Habitat Conservation Plan; and Goal C by leveraging grant funding to support these actions.

OTHER AGENCY INVOLVEMENT:

Agency staff has worked closely with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service during the development of the LEHCP.

The Planning Committee has received regular updates on the status of the LEHCP during their monthly meetings including presentations in February 2022 and June 2023.

An update on the status of the LEHCP was provided to the Board of Directors in May 2023.

The Finance Committee recommended adoption of the LEHCP and ITP during their May 2024 meeting.

FINANCING:

Implementation of the LEHCP for the five-year permit term is estimated to cost approximately \$322,400. This estimate includes mitigation actions, monitoring, reporting, and LEHCP administration by Agency staff. Funds have been dedicated in the proposed FY25 budget from Agency fund 116. Future funding will be dedicated in future annual budgets.

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Approved by: Ara Azhderian, General Manager, (831) 755-4860

Attachments:

1. Salinas River Lagoon and Sandbar Management LEHCP
2. USFWS Cover Letter
3. USFWS ITP: PER8656461
4. Low Effect ITP Determination and NEPA EAS Screening Form

5. Board Order