

**RECORD OF DECISION**  
For the Proposed Issuance of a  
Section 10(a)(1)(B) Incidental Take Permit  
Associated with the  
San Diego County Water Authority  
Subregional Natural Communities Plan/Habitat Conservation Plan

**I. SUMMARY**

This Record of Decision (ROD) was prepared by the U.S. Fish and Wildlife Service (Service) in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA, 42 U.S.C. 4321 et seq.). The purpose of this ROD is to document the decision of the Service in response to an application for an incidental take permit (Permit) under section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended (FESA, 16 U.S.C. §1531 et seq.). This decision is based on the submission of the San Diego County Water Authority Subregional Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) prepared by the San Diego County Water Authority (Water Authority). The NCCP/HCP addresses a variety of activities proposed by the Water Authority including installation of new infrastructure, operation and maintenance of existing infrastructure, and habitat and species monitoring and management (Covered Activities) and associated effects to 63 listed, proposed, and sensitive species (Covered Species).

The proposed issuance of the Permit is a Federal action subject to review under NEPA. The Service, at the direction of the Secretary of the Interior, prepared a draft and final Environmental Impact Statement (EIS) in compliance with NEPA. The Service prepared these documents jointly with the Water Authority, as the Water Authority was statutorily obligated to prepare a draft and final Environmental Impact Report (EIR) for the NCCP/HCP in fulfillment of the Water Authority's responsibilities under the California Environmental Quality Act (CEQA). The joint final EIR/EIS and the NCCP/HCP describe in detail the proposed action by the Service and the Water Authority and the Alternatives to those actions.

The purpose of the Service's action is to determine if the Water Authority's NCCP/HCP and application for a Permit meet issuance criteria in accordance with section 10(a)(1)(B) of the FESA. The need for the NCCP/HCP and Permit exists because the proposed Covered Activities will likely result in incidental take of Covered Species. As described in Sections VI and VII of this document, the Service has decided to issue a Permit for implementation of Alternative 2 (the "Proposed Plan" in the final EIR/EIS) to provide conservation for 63 Covered Species and their habitats in the Plan Area and to mitigate the effects of habitat loss and disturbance associated with the Covered Activities.

The Service proposes to achieve the following objectives with Permit issuance: to protect the Covered Species and their habitats that occur within the area addressed by the NCCP/HCP (Plan Area) in accordance with the FESA; to allow incidental take of 37 animals that are Covered Species and are either currently listed as threatened or endangered under the FESA or that may become listed during the 55-year term of the Permit; and to provide assurances to the Water Authority for each of the Covered Species under the Service's "No Surprises" rule codified at 50

C.F.R. 17.22(b)(5) and 17.32(b)(5), as modified on February 28, 1998, and in the Service Director's November 4, 2003, and January 28, 2004, memoranda on the subject.

In addition to the 63 Covered Species, the NCCP/HCP identifies Munz's onion, California oreutt's grass, and vernal pool fairy shrimp as Major Amendment Species. Major Amendment Species will not be included on the Permit and will require a major amendment to the NCCP/HCP, including appropriate review under NEPA, to be added to the Permit. Therefore, these species will not be addressed further in the ROD.

This ROD: a) provides background information about the development of the NCCP/HCP; b) briefly describes the activities anticipated in association with NCCP/HCP implementation; c) describes key issues of contention or controversy during development of the NCCP/HCP and public scoping; d) states the Service's decision relative to Permit issuance; e) describes Alternatives considered in the EIR/EIS in reaching the decision; f) presents the rationale for the Service's decision and describes its implementation; g) describes the process for obtaining, reviewing, and responding to public comments on the draft NCCP/HCP and draft EIR/EIS; h) explains changes made between the draft and final versions of the NCCP/HCP and EIR/EIS; and i) states whether all practicable means to avoid or minimize environmental harm from implementation of the selected Alternative have been adopted (40 C.F.R. 1505.2).

Documents used in preparation of this ROD include: the draft and final NCCP/HCP prepared by the Water Authority and RECON in 2009 and 2010, respectively; the Implementing Agreement; the draft and final EIR/EIS prepared by the Water Authority and Service in 2009 and 2010, respectively; the Service's 2011 Biological Opinion on the Permit application; and the Service's 2011 Findings on the Permit application. All of these documents are incorporated herein by reference as described in 40 C.F.R. 1508.13.

## **II. BACKGROUND**

As shown in Figure 1-1 of the NCCP/HCP, the Plan Area for the NCCP/HCP includes the Water Authority's service area boundary in western San Diego County and those lands that extend northward into Riverside County within a one-mile area on each side of the water delivery systems originating at Lake Skinner and Diamond Valley Reservoir that serve San Diego County, as well as exterior boundaries of other facilities within San Diego County that are outside the service area boundary. The Plan Area extends from coastal San Diego County on the western boundary to the Peninsular Ranges on the eastern boundary. The NCCP/HCP (p. 4-1) provides a detailed description of the Plan Area, including a summary of the environment and vegetation communities.

Plan Area for the NCCP/HCP overlaps with several regional natural community conservation plans/habitat conservation plans in San Diego County and western Riverside County (see Table 3-1 of the NCCP/HCP). The NCCP/HCP is designed to be compatible with other conservation plans in the Plan Area.

### III. PROJECT DESCRIPTION

#### A. Statutory Framework

A permit under section 10(a)(1)(B) of the FESA allows take (including harm, harassment, injury and/or mortality) of listed fish and wildlife species incidental to otherwise lawful activities provided the applicant's activities "will not appreciably reduce the likelihood of the survival and recovery of the [covered] species in the wild" and the applicant "minimizes and mitigates to the maximum extent practicable" the impact of take likely to result from its activities. In order to obtain such permission, the applicant must submit a HCP that, in the judgment of the Service, meets these basic requirements as well as the other criteria stated in section 10(a)(1)(B) of the FESA, including the requirement to ensure that adequate funding for the HCP will be provided.

Under the FESA and its implementing regulations, "take" of a listed species may arise from significant habitat modification that results in actual injury to or death of the species. The Water Authority's Covered Activities could result in "take" of listed species. Therefore, the Water Authority is seeking a Permit from the Service.

The Service completed a 2011 Biological Opinion analyzing effects of Permit issuance on Covered Species pursuant to section 7 of the FESA. The Service also adopted Findings on the proposed Permit in 2011. In accordance with the Service's section 7 Biological Opinion, the Findings, and this ROD, the Service has decided to issue a Permit to the Water Authority with a term of 55 years.

#### B. Activities Covered in the Incidental Take Permit

The proposed Covered Activities are organized into three categories: 1) construction of planned and future Capital Improvement Program projects; 2) operations and maintenance activities; and 3) Preserve Area management, monitoring, and adaptive management. The following is a summary of the activities proposed for coverage under the NCCP/HCP. Further information regarding these activities can be found in Section 5 and Appendix C of the NCCP/HCP.

With the exception of the Pipeline 6 Alternative Alignment project, all Covered Activities within the Riverside County portion of the Plan Area will require a Major Amendment.

**Capital Improvement Program (CIP):** The CIP includes, but is not limited to: buried pipelines with above-ground hydraulic structures and access roads; pump station, flow control, and metering facilities; and water treatment and regulatory storage facilities of various sizes. In addition, temporary construction staging areas may be needed to stockpile material and equipment. The NCCP/HCP identifies planned CIP projects in Appendix C. Future CIP projects outside the Survey Area and PIZ within San Diego County will be subject to the Minor Amendment process if the project conforms to the NCCP/HCP.

***Operations and Maintenance Activities (O&M):*** The Water Authority owns, operates, and manages pipelines and numerous ancillary facilities along the aqueduct pipeline corridors (Figure 2-1 of the NCCP/HCP). Water Authority facilities currently include 120 flow control structures, 286 miles of pipeline, 1,900 acres of rights-of-way, one dam/reservoir, three pump stations, three hydroelectric generating plants, and one waste water treatment plant.

O&M activities conducted by the Water Authority include, but are not limited to: re-grading of access roads; fire clearance around surface structures; pipeline inspections; valve and pipeline section replacements; drainage of pipeline, tank, and reservoirs for interior inspection and work; and cathode/anode renewal. The majority of O&M activities occur in developed and disturbed areas or other non-sensitive habitat areas. O&M activities are discussed in Section 5.2 of the NCCP/HCP.

***Preserve Area Management Activities:*** Preserve Area management and monitoring activities undertaken by the managers of the existing wetland Habitat Management Areas (HMAs) and future HMAs are discussed in section 6.11 and 6.12 of the NCCP/HCP. Preserve Area Management Plans will identify and provide detailed descriptions of the land management activities, restrictions, and practices that will be undertaken to maintain or enhance Covered Species habitat. Preserve Area management includes such activities as: fire management practices; effective access control; education/outreach; fencing; trash and debris removal; active and passive habitat restoration; stream stabilization measures; feral and domestic animal control; cowbird trapping; invasive exotic species control; and guidelines for species introduction and reintroduction. To the extent feasible, all future management activities will incorporate appropriate avoidance and minimization measures.

Over the 55-year term of the Permit, the NCCP/HCP anticipates that up to 373 acres of habitat subject to mitigation will be impacted by the Covered Activities described above. Additional impacts will occur within up to 618 acres of agricultural lands, and in limited instances these impacts may result in incidental take of Covered Species.

### **C. Summary of the NCCP/HCP Conservation Strategy**

The NCCP/HCP does not provide a land use plan for a region or a subregion. Instead it addresses a specific set of Covered Activities consisting primarily of improvements to and maintenance of infrastructure (primarily water pipelines), which will run through multiple subregions. Consequently, the conservation strategy relies primarily on providing conservation lands to complement existing and planned preserves, rather than creating a stand-alone preserve system. The NCCP/HCP conservation strategy includes the following elements:

***Establish Preserve Area:*** The NCCP/HCP will establish a Preserve Area that builds upon previous conservation contributions of regionally-significant habitat lands and provides full compensation for all new impacts to conserved habitats and any incidental take of Covered Species primarily through the debiting of credits at existing or planned HMAs.

HMA's in the Preserve Area currently include about 704 acres of upland and wetland credits. Credits will be debited from the HMA's using the ratios provided in Tables 6-6 and 6-7 of the NCCP/HCP. Assuming an average 2:1 mitigation ratio for projects/activities (e.g., roughly 746 mitigation acres), the currently available/proposed credits in the HMA's are nearly sufficient to meet the NCCP/HCP's mitigation needs for Covered Activities over the 55-year term of the NCCP/HCP. If the available credits would be reduced to below the projected need, the Water Authority would either obtain credits from an independent, approved conservation/wetland bank, acquire additional habitat acreage to add to the Preserve Area to meet that commitment, or provide a biologically superior alternative that is acceptable to the Service. The Preserve Area also includes about 275 acres of upland and wetland credits in the Rancho Cañada HMA that will not be used to offset impacts associated with implementing the NCCP/HCP. Thus, the credits remaining in the Rancho Cañada HMA represent conservation beyond what would be achieved through project-by-project permitting.

***Avoidance and Minimization:*** This programmatic element involves identifying and implementing environmentally sensitive methods for planning, construction, and operation and maintenance activities (Covered Activities) that minimize project impacts and ensure that activities within the Preserve Area are compatible with maintaining the long-term viability of Covered Species, their habitat, and ecological functions that support them.

***Adaptive Management:*** Each Preserve Area will produce a management plan that will complement and be consistent with the conservation plans for adjacent preserve areas. These plans will include measurable objectives for vegetation types, Covered Species, and ecological functions, where appropriate. The Water Authority will document that specified measures are implemented and that adequate funding is available to carry out management functions.

***Commitment to Implement Conservation Strategy:*** The NCCP/HCP commits the Water Authority to implement the conservation strategy described above. This includes the commitment to identify, monitor, and manage the Preserve Area to ensure that it meets the goals identified by the advisors. The measures in the NCCP/HCP are designed to avoid, minimize and mitigate the impacts of take of Covered Species and contribute to their conservation and are reviewed in Chapter 4 of the final EIR/EIS. The adequacy of the mitigation is explained in detail in the Findings document and the Biological Opinion. The Water Authority will sign the Implementing Agreement, a formal agreement that binds each party to carry out the NCCP/HCP conservation strategy and provides recourse and remedies should any party fail to perform its obligation under the plan. The Implementing Agreement will further ensure that the NCCP/HCP and the Permit will be fully implemented.

The Implementing Agreement allows the Water Authority to terminate its participation in the NCCP/HCP. In the event of termination by the Water Authority, the Permit will continue to remain in effect until the respective mitigation obligations set forth in the Implementing Agreement are implemented. Similarly, if the Service revokes or suspends all or part of the Permit, the Water Authority's obligations under the Implementing Agreement and the

NCCP/HCP will continue until the Service determines that all take of Covered Species has been sufficiently addressed under the Permit terms.

#### D. Covered Species

As previously stated, the Water Authority has submitted an application for a Permit that would provide coverage for project-related impacts to 63 Covered Species, including 18 federally-listed species and 45 other species, as presented below in Table I.

Table I. NCCP/HCP Covered Species

Common Name	Scientific Name	State/Federal Status	CNPS List	NCCP/HCP Policies
<b>LISTED PLANTS</b>				
California Orcutt grass	<i>Orcuttia californica</i>	CE/FE	1B	MA
Encinitas baccharis	<i>Baccharis vanessae</i>	CE/FT	1B	NE
Munz's onion	<i>Allium munzii</i>	CT/FE/CH	1B	MA
Otay Mesa mint	<i>Pogogyne nudiuscula</i>	CE/FE	1B	NE, VP
Otay tarplant	<i>Deinandra conjugens</i>	CE/FT/CH	1B	NE
San Diego ambrosia	<i>Ambrosia pumila</i>	-/FE/CH	1B	NE
San Diego button-celery	<i>Eryngium aristulatum</i> var. <i>parishii</i>	CE/FE	1B	NE, VP
San Diego mesa mint	<i>Pogogyne abramsii</i>	CE/FE	1B	NE, VP
San Diego thorn-mint	<i>Acanthomintha ilicifolia</i>	CE/FT/CH	1B	NE
Spreading navarretia	<i>Navarretia fossalis</i>	-/FT/CH	1B	NE, VP
Thread-leaved brodiaea	<i>Brodiaea filifolia</i>	CE/FT/CH	1B	NE
Willoway monardella	<i>Monardella viminea</i>	CE/FE/CH	1B	NE
<b>UNLISTED PLANTS</b>				
California adolphia	<i>Adolphia californica</i>	-/-	2	--
Chaparral nolina	<i>Nolina cismontana</i>	-/-	1B	--
Dunn's mariposa lily	<i>Calochortus dunnii</i>	CR/-	1B	NE
Felt-leaved monardella	<i>Monardella hypoleuca</i> ssp. <i>lanata</i>	-/-	1B	NE
Lakeside ceanothus	<i>Ceanothus cyaneus</i>	-/-	1B	NE
Munz's sage	<i>Salvia munzii</i>	-/-	2	--
Nuttall's scrub oak	<i>Quercus dumosa</i>	-/-	1B	--
Orcutt's brodiaea	<i>Brodiaea orcuttii</i>	-/-	1B	--
Parry's tetracoccus	<i>Tetracoccus dioicus</i>	-/-	1B	--
San Diego barrel cactus	<i>Ferocactus viridescens</i>	-/-	2	--
San Diego goldenstar	<i>Müllia clevelandii</i>	-/-	1B	--
San Diego marsh-elder	<i>Iva hayesiana</i>	-/-	2	--
Smooth tarplant	<i>Centromadia pungens</i> ssp. <i>laevis</i>	-/-	1B	--

Common Name	Scientific Name	State/Federal Status	CNPS List	NCCP/HCP Policies
Southern tarplant	<i>Centronadia parryi</i> ssp. <i>australis</i>	-/-	IB	--
Sticky-leaved dudleya	<i>Dudleya viscida</i>	-/-	IB	--
Variiegated dudleya	<i>Dudleya variegata</i>	-/-	IB	NE
<b>LISTED INVERTEBRATES</b>				
Quino checkerspot butterfly	<i>Euphydryas editha quino</i>	-/FE/CH	--	--
Riverside fairy shrimp	<i>Streptocephalus woattoni</i>	-/FE/CH	--	NE, VP
San Diego fairy shrimp	<i>Branchinecta sandiegonensis</i>	-/FE/CH	--	NE, VP
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	-/FT/CH	--	MA
<b>UNLISTED INVERTEBRATES</b>				
Harbison's dun skipper	<i>Euphyes vestris harbisoni</i>	-/-*	--	NE
Hermes copper butterfly	<i>Lycaena hermes</i>	-/-*	--	--
<b>LISTED AMPHIBIANS</b>				
Arroyo toad	( <i>Anaxyrus [Bufo] californicus</i> )	CSC/FE/CH	--	--
<b>UNLISTED AMPHIBIANS</b>				
Western spadefoot toad	<i>Spea hammondi</i>	CSC/-	--	--
<b>UNLISTED REPTILES</b>				
Belding's orange-throated whiptail	<i>Aspidoscelis hyperythra beldingi</i>	CSC/-	--	--
Coastal rosy boa	<i>Lichanura trivirgata roseofusca</i>	-/-*	--	--
Coastal (western) whiptail	<i>Aspidoscelis tigris stejnegeri</i>	-/-*	--	--
Coast (San Diego) horned lizard	<i>Phrynosoma coronatum blainvillii</i>	CSC/-*	--	--
Coronado skink	<i>Eumeces skiltonianus interparietalis</i>	CSC/-	--	--
(Northern) red-diamond rattlesnake	<i>Crotalus ruber</i>	CSC/-	--	--
San Diego banded gecko	<i>Coleonyx variegates abbottii</i>	-/-	--	--
San Diego ring-neck snake	<i>Diadophis punctatus similis</i>	-/-*	--	--
Southern Pacific (southwestern) pond turtle	<i>Actinemys marmorata pallida</i>	CSC/-	--	--
<b>LISTED BIRDS</b>				
Coastal California gnatcatcher	<i>Polioptila californica californica</i>	CSC/FT/CH	--	--
Least Bell's vireo	<i>Vireo bellii pusillus</i>	CE/FE/CH	--	--
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	CE/FE/CH	--	--
<b>UNLISTED BIRDS</b>				
Bell's sage sparrow	<i>Amphispiza belli belli</i>	-/-*	--	--
California horned lark	<i>Eremophila alpestris californica</i>	CSC/-	--	--
Grasshopper sparrow	<i>Ammodramus savannarum</i>	CSC/-	--	--
Loggerhead shrike	<i>Lanius ludovicianus</i>	CSC/-	--	--
San Diego cactus wren	<i>Campylorhynchus brunneicapillus sandiegensis</i>	CSC/-*	--	NE

Common Name	Scientific Name	State/Federal Status	CNPS List	NCCP/HCP Policies
Southern California rufous-crowned sparrow	<i>Aimophila ruficeps canescens</i>	-I-I*	--	--
Tricolored blackbird	<i>Agelaius tricolor</i>	CSC/-	--	--
Western burrowing owl	<i>Athene cunicularia hypugaea</i>	CSC/-	--	--
Yellow warbler	<i>Dendroica petechia brewsteri</i>	CSC/-	--	--
Yellow-breasted chat	<i>Icteria virens</i>	CSC/-	--	--
<b>LISTED MAMMALS</b>				
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	CT/FE		--
<b>UNLISTED MAMMALS</b>				
Dulzura (California) pocket mouse	<i>Chaetodipus californicus femoralis</i>	CSC/-	--	--
Los Angeles pocket mouse	<i>Perognathus longimembris breviusus</i>	CSC/-	--	--
Mountain lion	<i>Felis concolor</i>	-I-I*	--	--
Northwestern San Diego pocket mouse	<i>Chaetodipus fallax fallax</i>	CSC/-	--	--
San Diego black-tailed jackrabbit	<i>Lepus californicus bennettii</i>	CSC/-	--	--
San Diego desert woodrat	<i>Neotoma lepida intermedia</i>	CSC/-	--	--
Southern grasshopper mouse	<i>Onychomys torridus ramona</i>	CSC/-	--	--

**California Native Plant Society (CNPS) Lists**

- 1B = Species rare, threatened, or endangered in California and elsewhere.
- 2 = Species rare, threatened, or endangered in California, but more common elsewhere.
- 3 = Species for which more information is needed (a review list).
- 4 = A watch list of species of limited distribution.

**Federal and State Listed Plants**

- FE = Federally listed, endangered
- FT = Federally listed, threatened
- FC = Federal Candidate for listing
- CH = Critical Habitat proposed or designated in the Plan Area
- CE = State listed, endangered
- CT = State listed, threatened
- CR = State listed, rare

**NCCP/HCP Policies**

- NE = Narrow Endemic Policy
- VP = Vernal Pool Protection Policy
- MA = Major Amendment Species

**Other**

- CFP = California Fully Protected Species. No take of individuals is permitted.
- CSC = California Department of Fish and Game Species of Special Concern
- \* = Taxa listed with an asterisk fall into one or more of the following categories:

- Taxa considered under Section 15380(d) of CEQA guidelines.
- Population(s) in California that may be peripheral to the major portion of a taxon's range, but which are threatened with extirpation within California.



- Taxa closely associated with a habitat that is declining in California at an alarming rate (e.g., wetlands, riparian, old growth forests, desert aquatic systems, native grasslands).

Although take of plant species is not prohibited under the FESA and cannot be authorized under an incidental take permit under section 10(a)(1)(B), the plant species that are included as Covered Species would be included on the Permit in recognition of the conservation benefits provided to the species under the NCCP/HCP. Assurances provided under the "No Surprises" rule would extend to all Covered Species.

The Water Authority has also requested incidental take authorization from the California Department of Fish and Game through the NCCP Act (California Fish and Game Code sections 2800 *et seq.*) for the same 63 Covered Species, of which 13 species are listed as threatened or endangered under the California Endangered Species Act.

In addition, the Water Authority has requested that the Permit under section 10(a)(1)(B) of the FESA constitutes a Special Purpose Permit under 50 C.F.R. section 21.27 for the take of Covered Species listed under FESA that are also listed under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712) (MBTA), in the amount and/or number specified in the NCCP/HCP, subject to the terms and conditions specified in the Permit. Any such take would not be in violation of the MBTA. The MBTA Special Purpose Permit would extend to Covered Species listed under FESA and also under the MBTA after the Effective Date of the Permit. The Special Purpose Permit would be valid for a period of 3 years from its Effective Date, provided that the Permit remains in effect for such period. The Special Purpose Permit would be renewed pursuant to the requirements of the MBTA, provided that the Water Authority submits a request for renewal and remains in compliance with the terms of the Implementing Agreement and the Permit.

#### **E. Enforcement and Monitoring**

The NCCP/HCP, the Implementing Agreement, and the Permit (as well as the Service's permit administration regulations set forth at 50 C.F.R. Parts 13 and 17) identify monitoring obligations and enforcement mechanisms to ensure the NCCP/HCP is properly implemented. Management plans providing for permanent management of the biological resources and supporting ecosystem processes within the Preserve Area will be developed and implemented as provided under the NCCP/HCP.

#### **F. Covered Activities Subject to a Major or Minor Amendment**

Section 17.4 of the Implementing Agreement sets forth requirements and procedures for major or minor amendments (as applicable) to Covered Activities.

#### **G. Time Line**

The NCCP/HCP is a 55-year plan intended to address the protection and conservation of Covered Species and other biological resources within the Plan Area, while accommodating the

CIP, O&M activities, and other Covered Activities authorized pursuant to provisions of the Implementing Agreement and the Permit.

#### **IV. KEY ISSUES**

Through the scoping and public review process for the EIR/EIS, impacts considered to be potentially significant were identified and analyzed in the final EIR/EIS. There were no major issues identified in the scoping process or raised in comments on the draft EIR/EIS. Comments, responses, and revisions to the draft EIR/EIS are provided in Volume III of the final EIR/EIS. In response to questions from the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps), the Service provided additional information in the Volume III of the final EIR/EIS regarding generation of greenhouse gases associated with Covered Activities, potential effects of climate change on Covered Species, the potential for the project to be growth inducing, and the relationship between the NCCP/HCP and the Corps' permitting process under section 404 of the Clean Water Act (33 U.S.C. §1251 et seq.).

#### **V. ALTERNATIVES CONSIDERED**

##### **A. Alternative 1: No Action/No Permit Alternative**

Under the No Action/No Permit Alternative, the Water Authority would continue to comply with applicable environmental programs and prior agreements to address impacts to biological species and habitats that might result from Water Authority activities. The Water Authority would remain subject to take prohibitions of the FESA and continue to obtain individual permits for listed species on a project-by-project basis. The Water Authority would continue to comply with existing and future biological opinions.

Under this alternative, the Water Authority would meet the demands of regional water supply by continuing to construct, expand, operate, and maintain facilities and rights-of-way while obtaining individual take permits for each activity. Current and future activities of the Water Authority under the No Action/No Permit Alternative would be the same as those described under the Proposed Plan Alternative. Individual project construction and expansion would be implemented through the Water Authority's CIP as guided by the Master Plan. Construction and expansion of the CIP and O&M activities would be conducted in accordance with the Water Authority's existing protocols for industry-accepted planning, engineering, construction, and environmental impact minimization practices.

##### **B. Alternative 2: Proposed Plan Alternative**

The proposed action is issuance of a Permit by the Service for incidental take of 63 Covered Species in the Plan Area. The 63 Covered Species are a combination of sensitive and State and federally listed species that may be impacted by the project, including those that occur outside the PIZ, but within the Plan Area. This alternative is described in detail in Section II (Project Description) of this ROD.

**C. Alternative 3: Full Species List Alternative**

The Full Species List Alternative would allow the Water Authority to adopt the proposed NCCP/HCP as it is described in Alternative 2 and to increase the list of Covered Species. The Service would consider issuing a permit for incidental take of the full list of species analyzed in Appendix B of the NCCP/HCP, which is a total of 89 species (42 plant species and 47 wildlife species). These 89 species are listed in Tables 2-1 and 2-6 of the final EIR/EIS.

All project elements contained within Alternative 2 would apply under Alternative 3, with the measures in the NCCP/HCP implemented for the full list of species. The Preserve Area conserved by this alternative would encompass the same HMAs as described in Alternative 2. In the HMAs, the Water Authority would be responsible for funding the management and monitoring all 89 species.

Under Alternative 3, the Water Authority would implement one or more of the following conservation options for the additional 25 Covered Species:

1. Demonstrate that adequate suitable habitat already exists (either occupied or not) within the Preserve Area to justify coverage.
2. Acquire additional habitat with known Covered Species' occurrences or the potential to support the species with suitable habitat. Suitable habitat should have enhancement or restoration potential and should be biologically viable for the species' persistence. Such habitat must be added to the Preserve Area and managed and monitored in perpetuity consistent with the NCCP/HCP.
3. Restore and/or enhance habitat within the Plan Area's existing mitigation properties/Preserve Area. Restoration or enhancement sites should be managed and monitored in perpetuity consistent with the NCCP/HCP.
4. Contribute funds to other species-specific regional conservation efforts or species-specific management programs.
5. Implement a biologically superior conservation alternative for the species at appropriate locations within the Plan Area.
6. Propagate species for reintroduction and/or introduction into biologically suitable habitat within the Plan Area in accordance with a restoration and monitoring program approved by the Service and California Department of Fish and Game.
7. Salvage and relocate species into suitable habitat in accordance with a restoration and monitoring program approved by the Service and California Department of Fish and Game.
8. Purchase mitigation bank credits within established mitigation banks that support and provide active management for the species.

**D. Alternative 4: Reduced Plan Area Alternative**

Under the Reduced Plan Area Alternative, the Water Authority would adopt the NCCP/HCP as described in Alternative 2, with coverage proposed only for those 41 species that are known to

occur within the PIZ. The list of species is provided in Table 2-7 of the NCCP/HCP. The Plan Area that would be permitted would be limited to the PIZ, and the Covered Activities would be the same as those covered under Alternative 2. The Preserve Area conserved by this alternative would also encompass the same HMAs as Alternatives 2 and 3.

## VI. THE DECISION

Based on the results of the final EIS/EIR and the associated appendices, the Service has selected Alternative 2 (the "Proposed Plan" in the final EIS/EIR) to provide conservation for 63 Covered Species and their habitats in the Plan Area and to mitigate the effects of habitat loss and disturbance associated with the Covered Activities, including the CIP, O&M activities, and preserve management and monitoring activities on the part of the Water Authority.

The NCCP/HCP will be implemented by:

- (a) Providing coverage under the Permit for 63 Covered Species, including:
  - 8 animal species that are listed under the FESA:
    - 7 federally endangered animal species – Quino checkerspot butterfly, Riverside fairy shrimp, San Diego fairy shrimp, arroyo toad, least Bell's vireo, southwestern willow flycatcher, and Stephens' kangaroo rat;
    - 1 federally threatened animal species - coastal California gnatcatcher;
  - 10 plant species that are listed under the FESA:
    - 5 federally endangered plant species – Otay mesa mint, San Diego ambrosia, San Diego button celery, San Diego mesa mint, and willowy monardella;
    - 5 federally threatened plant species – Encinitas baccharis, Otay tarplant, San Diego thorn-mint, spreading navarretia, and thread-leaved brodiaea
  - 45 non-listed plant and animal species in the event they become listed during the 55-year term of the Permit;
- (b) Extending assurances under the Service's "No Surprises" rule to each of the 63 listed and unlisted Covered Species in the NCCP/HCP; and
- (c) Issuing the Permit pursuant to section 10(a)(1)(B) that would also serve as an MBTA Special Purpose Permit for Covered Species that are listed under both FESA and MBTA.

## VII. RATIONALE FOR DECISION

The Service adopted Alternative 2 (the Proposed Plan) because it best meets the statutory criteria for permit issuance pursuant to section 10(a)(1)(B) of the FESA, as explained in detail in the Service's Findings. Implementation of the NCCP/HCP will minimize significant adverse environmental impacts to Covered Species and the habitats on which they depend while effectively mitigating unavoidable impacts to Covered Species and habitats. A more detailed analysis of the effectiveness of the minimization and mitigation measures provided in the NCCP/HCP is contained in the Service's Biological Opinion and Findings.

The decision to select the Proposed Plan described in the NCCP/HCP also rests, in part, on the analysis presented in the EIR/EIS, which compared the predicted environmental consequences of each alternative against the No Action/No Permit Alternative.

The NCCP/HCP and the final EIR/EIS evaluated the relative effects of the alternatives on other resources in the Plan Area, including, but not limited to, biological resources, water resources and water quality, land use, public services and utilities, socioeconomics, and environmental justice. The alternatives would have similar effects on all of the resources evaluated, with the exception of biological resources and public services and utilities.

### A. Biological Resources

The impacts to biological resources from construction of the CIP and O&M activities would be comparable under each of the alternatives because the CIP and O&M activities would be similar whether they are permitted on a project-by-project basis or addressed collectively through the NCCP/HCP.

The comprehensive approach to mitigation proposed in the NCCP/HCP (Proposed Plan; Alternative 2) will result in more conservation and conservation of higher-value biological resources than would be accomplished if mitigation was implemented on a project by project basis. Importantly, the 275-ac Rancho Cañada HMA is conserved as part of the NCCP/HCP, but it will not be used as a source of mitigation credits to offset project-specific impacts. This additional conservation would not have been accomplished through Alternative 1.

Alternative 3 would cover 26 more species than Alternative 2. However, it has not yet been demonstrated that there is adequate conservation and protection for the full list of species. Therefore, the Water Authority would be required to conduct research and surveys to supplement existing species information and direct strategic acquisition of additional lands for the Preserve Area to adequately mitigate for impacts to all 89 species. The efforts to research, survey, and plan for species unlikely to be significantly impacted by the plan could unnecessarily divert attention and resources from monitoring and management of the species that are likely to be impacted by the project and to occur in the Preserve Area. Therefore, Alternative 2 is preferable to Alternative 3 with respect to effects on biological resources.

Alternative 4 would cover only the 41 Covered Species in the PIZ, which could allow the Water Authority to concentrate resources on the species most likely to be impacted by the project. However, this alternative would not adequately address potential impacts to species if construction occurs outside the PIZ. Therefore, Alternative 2 is preferable to Alternative 3 with respect to effects on biological resources.

**B. Public Services and Utilities**

The permitting of projects on a case-by-case basis (Alternative 1) would likely result in reduced efficiency and greater delays with respect to the permitting and construction of projects, which would reduce the availability and quality of public services and utilities relative to the alternatives involving preparation of an NCCP/HCP (Alternatives 2, 3, and 4).

Alternative 4 would cover 41 species that occur within the PIZ, but it would not address impacts outside the PIZ (e.g., if a pipeline cannot be feasibly located within the existing alignment, it may result in impacts outside the PIZ) and, therefore, would provide less flexibility for the Water Authority with respect to the development and implementation of Covered Activities. The lack of coverage for species outside the PIZ could lead to project delays and reduced availability and quality of public services and utilities if construction is necessary outside the PIZ. Therefore, Alternative 4 is less preferable to Alternatives 2 and 3 with respect to effects on public services and utilities.

**Summary**

The conservation provided under the Proposed Plan (Alternative 2) is the preferred NEPA alternative because it accurately accounts for the take anticipated from Covered Activities in the Plan Area, as analyzed in the EIR/EIS and Biological Opinion and summarized in the Findings; effectively minimizes and mitigates the impacts of that take; provides greater conservation than the Alternative 1; does not require monitoring and management for species that are unlikely to be impacted by Covered Activities; and provides the Water Authority with sufficient flexibility to implement all Covered Activities within the Plan Area. For these reasons, the Service has decided to issue the section 10(a)(1)(B) Permit, with Terms and Conditions, to the Water Authority in accordance with the final NCCP/HCP and the Implementing Agreement.

**VIII. PUBLIC INVOLVEMENT**

A Notice of Intent (NOI) to prepare the EIR/EIS<sup>1</sup> for the Federal action associated with the project was published in the Federal Register on November 26, 2003 (68 FR 66478). Public comments on the scope of the alternatives and environmental effects to be examined for the proposed project were requested by December 26, 2003. A public scoping meeting was held on December 11, 2003. One comment letter was received during this scoping process, and three people spoke at the scoping meeting. Comments related to coordination with other regional

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<sup>1</sup> The draft and final EIR/EIS are combined documents that include both the EIR required pursuant to CEQA and the EIS required pursuant to NEPA. The Service was the lead agency only for the EIS, so the Federal Register announcements refer to only the EIS portion of the document.

conservation plans, protections of very rare species and habitats, purpose and need, water resources, air quality and coordination with tribes. Comments were addressed in the draft EIR/EIS.

A Notice of Availability of the draft EIR/EIS, with a public review period of 90 days, was published in the Federal Register on March 4, 2010 (75 FR 9921). Public scoping meetings were held on March 17 and 18, 2010. Comments were requested by June 2, 2010. In total, the Service received seven comment letters on the draft EIR/EIS, and a response to each comment is included in the final EIR/EIS. Comments related to coordination with other regional conservation plans, impacts of climate change, and water resources. Comments were addressed in the final EIR/EIS.

A Notice of Availability of the final EIR/EIS was published in the Federal Register on February 4, 2011 (76 FR 6491). The Service received one comment letter on the final EIR/EIS. None of the comments received presented significant new issues or identified effects of the action that were not previously addressed in the draft and final EIR/EIS and in the responses to comments on the draft EIR/EIS included in the final EIR/EIS.

## **IX. CHANGES TO THE NCCP/HCP**

The public comment period on the draft NCCP/HCP dated November 2009 and its associated environmental documents enabled the Service to gather comments from interested parties. The process of reviewing and considering these comments led to changes to the draft NCCP/HCP. The final version of the EIR/EIS and the NCCP/HCP are dated October 2010 and were made available to the public on February 4, 2011 (76 FR 6491). Volume III of the final EIR/EIS includes changes that were made between the draft and final EIR/EIS and changes that were made between the draft and final NCCP/HCP. In addition, the Water Authority has incorporated the following changes to the NCCP/HCP and associated appendices subsequent to the final EIR/EIS:

### NCCP/HCP

1. Section 5.2, page 5-30: Take associated with pesticide use is not covered by the Water Authority's NCCP/HCP.
2. Section 5.4, page 5-41, Table 5-3:
  - a. Following the text on page B-22 of Appendix B, up to 5 acres of vernal pool/watershed may be impacted from Future CIP projects. These 5 acres were not included in Table 5-3 and have been added to the "wetland" category for a total of 6.5 acres; however, the 5-acre impact also includes upland watershed.
  - b. The habitat restoration work proposed for the Tijuana River Valley HMA is not a Covered Activity. Therefore, 4.8 acres of impacts have been subtracted

from the Planned CIP Projects "riparian" category for a total of 7.1 acres of impact for Planned CIP Projects and 45.0 acres of total riparian impacts.

3. Section 7.2.2.4, page 7-12: In regards to funding Changed Circumstances, the Plan states "The Water Authority will provide the required funds as a separate account for Changed Circumstances." The following clarifies the account that will be used to fund remedial actions to address Changed Circumstances.
  - a. The Water Authority Board of Directors has determined that the Water Authority's Emergency Operating Reserves Account, funded out of the Water Authority's Operating Funds, will be the designated fund for Changed Circumstances. The Water Authority's policy requires that a maximum of 45 days of average annual operating expenditures be kept in reserve for emergency repairs and other unanticipated events that would include Changed Circumstances as defined by the NCCP/HCP. As of June 30, 2011, the operating reserves balance was \$76,484,907.00.

#### Appendix B (Conservation Analysis)

1. Section 1.2, page B-22 (2<sup>nd</sup> paragraph): Add the word "occupied" to the following sentence: "... the Plan indicates that up to 10 acres of impacts could occur to occupied habitat supporting Otay tarplant and Dulzura pocket mouse."
2. Section 3.2, page B-41 (4<sup>th</sup> paragraph): Delete the following language: "The San Miguel HMA supports California adolphia. Exhibit J of the banking agreement (found in Appendix J of the Plan) lists 350 plants on approximately 0.7 acre as available mitigation credits. If avoidance of impacts is not possible, mitigation credits will be deducted from the conservation bank or the local population will be counted and restored on-site or at an appropriate mitigation site at a minimum 1:1 conservation ratio."
3. Section 3.2, page B-42: Replace Condition for Coverage #2 with the following language: Incorporate California adolphia into the restoration plant palette for upland habitat enhancement, restoration, and/or creation projects, where appropriate.
4. Section 3.14, page B-91: Delete Condition for Coverage #1. Sticky dudleya is not a major amendment species.
5. Section 3.15, page B-96: In Condition for Coverage #4 for San Diego button-celery, change "vernal pool watershed" to "population."
6. Section 3.20, page B-114: In Condition for Coverage #3 for San Diego goldenstar, change "vernal pool watershed" to "population."
7. Section 3.18, page B-107: Delete Condition for Coverage #4 for felt-leaved monardella.
8. Section 3.20, page B-114: Delete Condition for Coverage #5 for San Diego goldenstar.



9. Section 4.4, page B-166: Change Condition for Coverage #4 to read “Where feasible, a minimum 100-foot project construction buffer will be established adjacent to occupied or suitable Harbison’s dun skipper habitat (as determined by a qualified environmental surveyor), measured from the outer edge of oviposition and larval San Diego sedge (host plant) patches.”
10. Section 4.5, page B-171: Change Condition for Coverage #7 to read “Where feasible, a minimum 100-foot project construction buffer will be established adjacent to occupied or suitable Hermes copper butterfly habitat (as determined by a qualified environmental surveyor), measured from the outer edge of habitat patches, which are defined as the outer edge of the patch of redberry.”
11. Section 4.6, page B-176: Change Condition for Coverage #8 to read “Where feasible, a minimum 100-foot project construction buffer will be established adjacent to occupied or suitable Quino checkerspot butterfly habitat (as determined by a qualified environmental surveyor), measured from the outer edge of habitat patches.”
12. Section 5.2, page B-188: In Condition for Coverage #7, change reference to “Attachment B-2” to “Attachment B-3.”
13. Section 6.1, page B-194: Change Condition for Coverage 4a to read “If encountered in areas to be impacted, southwestern pond turtles will be relocated to other suitable habitat in the vicinity, but outside the expected disturbance zones. Exclusionary fences may be used to keep turtles out of construction areas. These fences should be placed and monitored daily by a biologist familiar with pond turtle ecology. Any eggs discovered during pre-construction or construction activities will be salvaged by an authorized person and hatched in a protected offsite area. Successful hatchlings will be released back into suitable habitat in the vicinity of the salvage area or in an alternate location approved by the Wildlife Agencies. Any relocation of pond turtles or salvaging of turtle eggs shall occur in consultation with the Wildlife Agencies and may require preparation and approval of a Pond Turtle Holding Plan prior to implementation. Any Pond Turtle Holding Plan will include, but not be limited to: capture and reintroduction protocols, designation of hatching facilities and holding areas, feeding strategy, and expected length of time the animals will be held.”
14. Section 6.1, page B-194: Delete Condition for Coverage #5 for the southern Pacific pond turtle.
15. Section 7.4, page 3 B-240: Add the following language as Condition for Coverage #10 for the least Bell’s vireo: “If construction activities must commence during the riparian avian breeding season, minimize impact through conducting nest surveys within 300 feet of all proposed activities (see Section 2.3 for the Avian Breeding Season Policy). If active nests are encountered, no Covered Activities shall be implemented within a minimum distance of 100 feet of the nest. A greater setback (up to 300 feet) may be required, as determined by the Environmental Surveyor, based on the site specific considerations,

phase of the nesting cycle, and species or other biological considerations (see Section 2.4, Buffers).

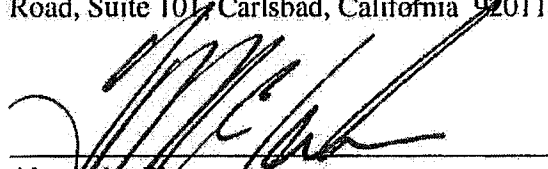
- 16. Regarding species credits at the San Miguel Conservation Bank, remove references to the availability of transfer credits from the 500-acre "Acquisition Parcel." These credit transfers were specifically assigned to the original bank owner to mitigate a specific project (Appendix J, San Miguel Conservation Banking Agreement) and are not available to the Water Authority.

**X. IMPLEMENTATION**

Implementation of this decision may occur not sooner than 30 days after the date that the Notice of Availability of the final EIR/EIS is published in the Federal Register. This notice was published on February 4, 2011; therefore, timing of the Service's action on the NCCP/HCP Permit Application is in compliance with the Council of Environmental Quality regulations found at 40 C.F.R. 1506.10.

**XI. CONTACT PERSON**

For additional information concerning the specific activities authorized under this decision, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, California 92011, phone (760) 431-9440.

*Acting*  
  
 Alexandra Pitts  
 Deputy Regional Director  
 Pacific Southwest Region

*12.20.11*  
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 Date