

for this incidental take by agreeing to provide buffers between forested areas and development as well as funding a bald eagle research project.

Stephen C. Helfert,

*Acting Regional Director, Region 2,
Albuquerque, New Mexico.*

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Restoration of the Diamond Lake Recreational Fishery

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces that we are cancelling a Notice of Intent to gather information necessary to prepare an Environmental Impact Statement (EIS) for the proposed Oregon State project "Restoration of the Diamond Lake Recreational Fishery."

FOR FURTHER INFORMATION CONTACT: Jerry Novotny, Office of Migratory Birds and State Programs, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181. Telephone: 503-231-6128.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy, the U.S. Fish and Wildlife Service (Service) advises the public that we are cancelling a Notice of Intent Act to gather information necessary to prepare an Environmental Impact Statement (EIS) for the proposed State project "Restoration of the Diamond Lake Recreational Fishery" (**Federal Register** Vol. 64, No. 39, pages 10009-10011, March 1, 1999). This State project was to be funded through the Service's Federal Aid in Sport Fish Restoration Program. The State of Oregon, at the direction of their Fish and Wildlife Commission, has notified the Service that they are withdrawing their proposal and associated funding request to treat the lake with rotenone in an attempt to eradicate an overpopulation of tui chub. Water quality issues, concerns about downstream disturbances, and escalating costs of such a large project resulted in the State's change of plans. They now intend to selectively manage the lake for species native to the watershed to seek control of the tui chub population.

Dated: October 3, 2001.

Cynthia U. Barry,

Acting Regional Director.

[FR Doc. 01-25869 Filed 10-12-01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Redhawk Communities, Inc. Development in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Redhawk Communities, Incorporated (the Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service is considering issuance of a 7-year permit to the Applicant that would authorize take of the endangered Riverside fairy shrimp (*Streptocephalus woottoni*) incidental to otherwise lawful activities. Such take would occur during the construction of 326 residential units and 84 condominium units on a previously graded site located near Temecula in southwestern Riverside County, California.

We request comments from the public on the permit application, and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (HCP) and an accompanying Implementing Agreement (legal contract).

DATES: We must receive your written comments on or before December 14, 2001.

ADDRESSES: Please address written comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to (760) 431-5902.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Cleary-Rose, Habitat Conservation Plan Coordinator, at the above address or call (760) 431-9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the

above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address and at the Temecula Library located at 41000 County Center Drive, Temecula, California.

Background

Section 9 of the Endangered Species Act (Act) and Federal regulations prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include "harass, harm, pursue, hunt, shot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Service may, under limited circumstances, issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicant has proposed development of 326 residential units and 84 condominium units on 102.81 acres. Surrounding land uses include residential development and a golf course.

Biologists surveyed the project site for biological resources between 1998-2001. While no listed species had been found on Vesting Tentative Tracts 1, 2 and 3 and Tract 30246, issuance of a grading permit by the County was conditioned on surveys for Quino checkerspot butterfly (*Euphydryas editha quino*) and coastal California gnatcatcher (*Poliptila californica californica*) in the year immediately prior to construction. Surveys were conducted in 2001 by Pacific Southwest Biological Services. Neither Quino checkerspot butterfly nor coastal California gnatcatcher was found on the project site. During a break in pre-construction protocol surveys for the gnatcatcher on March 23, 2001, five fairy shrimp were observed and collected in two small temporary erosion control sedimentation basins on site.

During additional 2001 surveys of the sedimentation basins, biologists found Riverside fairy shrimp in 11 of the 19 temporary sedimentation basins that still contained water. No shrimp were collected in two of the basins, and six basins were dry and not sampled. For purposes of this incidental take permit application, all 19 of the temporary

sedimentation basins are considered to be occupied by Riverside fairy shrimp.

Based on the survey results, the Service concluded that implementation of the proposed project would result in take of Riverside fairy shrimp habitat through the permanent removal of 1.01 acres of temporary sedimentation basins. Environmental effects addressed in the HCP and Environmental Assessment include: (1) Potential loss of Riverside fairy shrimp cysts during salvage and translocation to the mitigation site; and (2) potential loss of Riverside fairy shrimp that could occupy a permanent sedimentation basin to be built and maintained on the project site in the future.

The Applicant proposes to implement the following measures to mitigate and minimize take of Riverside fairy shrimp: (1) Restore, preserve, and manage in perpetuity a total of 1.5 acres of vernal pool habitat and 8 acres of the surrounding watershed on the Johnson Ranch northeast of the project site; (2) Avoid permanent loss of fairy shrimp individuals and temporal loss of their habitat by salvaging cysts from the Redhawk site and translocating them to the restored pools in the dry season (fall of 2001) to be ready for potential hydration and hatching during the winter rains of 2001–2002; (3) Store approximately one-fifth of the salvaged cysts at the San Diego Zoological Society's Center for the Reproduction of Endangered Species (CRES) until the created pools meet their final success criteria. Storage at CRES would ensure that viable genetic material from the affected population remained in case the created pools were unsuccessful; and (4) Implement an adaptive management plan for the conserved areas. The Applicant proposes to endow the long-term management of the off-site mitigation of 1.5 acres of fairy shrimp basin habitat and surrounding watershed with a contribution of \$25,000 to the California Department of Fish and Game (CDFG, the owner of the mitigation site) upon issuance of the incidental take permit. After success criteria stipulated in the HCP and mitigation plan are met, the conserved area would be protected and managed in perpetuity by the CDFG.

The Environmental Assessment considers the environmental consequences of three alternatives including the Proposed Action. The Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project on Riverside fairy shrimp. Under the "No

Action" alternative, the Service would not issue a permit. Under this alternative, the Applicant could retain the property or sell it to somebody else who may choose to develop it. In either case, the temporary sedimentation basin habitat onsite would continue to be operated and maintained as a result of (1) Administrative Order No. 94–20 issued by the Regional Water Quality Control Board (RWQCB) in 1994 and (2) requirements of the Environmental Protection Agency (EPA). The "No Action" alternative does not avoid take of Riverside fairy shrimp.

Under the "Avoidance of Temporary Sedimentation Basins" alternative, complete redesign of the proposed development would be required to avoid the 1.01 acres of temporary erosion control basin habitat. The complete avoidance and preservation of the temporary erosion control sedimentation basins would result in the loss of about 20 lots and make the proposed project economically infeasible. The temporary sedimentation basins were constructed along a central circulation road to provide easy access for maintenance and their avoidance would render the development infeasible. The benefits of the avoidance of the temporary sedimentation basins to Riverside fairy shrimp are not commensurate with the increased costs to the project. Additionally, the preservation of habitat in the middle of a residential development would result in a difficult management situation with marginal benefit for the species and the required operation and maintenance of the temporary sedimentation basins still would result in take of Riverside fairy shrimp and reduce the likelihood of their long-term survival on site. The significant costs for redesign would not result in improved conservation of the species.

Under either of the alternatives, no HCP would be prepared. The alternatives would preclude the main conservation benefit of the HCP, the restoration of vestigial vernal pool habitat on the Johnson Ranch. Funds would not be contributed to provide for the management of the restored habitat in perpetuity.

The alternatives to the Proposed Action would result in less habitat value for the Riverside fairy shrimp and contribute less to its long-term survival in the wild than the off-site mitigation measures under the Proposed Action.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the regulations of the National Environmental Policy Act of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses,

will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of Riverside fairy shrimp. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: October 5, 2001.

David Patte,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

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DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Department Policy, 28 C.F.R. 50.7, notice is hereby given that a Partial Consent Decree in *United States v. American Scrap Company*, Civil Action No. 1:99–CV–2047, was lodged with the United States District Court for the Middle District of Pennsylvania on October 1, 2001. This Partial Consent Decree resolves the United States' claims against Chemung Supply Corporation ("Settling Defendant") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania. The Partial Consent Decree requires the Settling Defendant to pay \$210,000.00 in past response costs.

The Department of Justice will accept written comments on the proposed Partial Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States v. American Scrap Company*, DOJ # 90–11–2–911/1.

Copies of the proposed Partial Consent Decree may be examined at the Office of the United States Attorney,