

not be known for many years; however, current natural resources and resource services that have been impacted due to the discharged oil include but are not limited to the following (as of August 19, 2010):

- Over 950 miles of shoreline habitats, including salt marshes, sandy beaches, and mangroves.
- A variety of wildlife, including birds, sea turtles, and marine mammals.

As of June 29, 2010:

- Over 1,900 oiled birds captured and over 1,850 visibly oiled dead birds collected.
- Over 400 oiled sea turtles captured and 17 visibly oiled dead sea turtles collected.
- 5 visibly oiled dead marine mammals collected.
- Lost human use opportunities associated with various natural resources in the Gulf region, including fishing, swimming, beach-going and viewing of birds and wildlife.
- Waters of the Gulf of Mexico and adjoining coastal States.
- Various other biota, including benthic communities and fish.
- Water column habitat.

Accordingly, the Trustees have determined they have jurisdiction to pursue restoration under the OPA.

#### Determination To Conduct Restoration Planning

Pursuant to 15 CFR 990.42(a), the Trustees determined that:

1. Observations and data collected pursuant to 15 CFR 990.43 demonstrate that injuries to natural resources and the services they provide have resulted from the Incident or Incidents; however, the nature and extent of such injuries have not been fully determined at this time. The Trustees have identified numerous categories of impacted and potentially impacted resources, including fish, shellfish, marine mammals, turtles, birds, and other sensitive resources, as well as their habitats, such as wetlands, marshes, beaches, mudflats, bottom sediments, corals, and the water column, as well as effects to human use resulting from the impacts on the resources. The Trustees have been conducting, and continue to conduct, activities to evaluate injuries and potential injuries within these categories. More information on these resource categories will be available in the Administrative Record ("AR," as defined below), including assessment work plans developed jointly by the Trustees and BP and information gathered during the preassessment. The full nature and extent of injuries will be determined during the injury

assessment phase of restoration planning.

2. Response actions employed for this spill include in situ burning, dispersant applications, containment and skimming of oil, and removal operations. These response actions have not addressed and are not expected to address all injuries resulting from the discharges of oil. Although response actions were initiated soon after the explosion and continue to date, they have been unable to prevent injuries to many natural resources, and the size, nature, and location of the discharges have prevented recovery of most of the oil. In addition, some of these response actions have caused or are likely to cause injuries to natural resources and the services they provide, including destruction of sensitive marshes, beaches, and other habitats, and impacts to human uses of resources. While injured natural resources may eventually recover naturally to the condition they would have been in had the discharges not occurred, interim losses have occurred, or are likely to occur in the future, and these will continue until baseline conditions are achieved. In addition, there have been and will continue to be losses of and diminution of human uses of the resources resulting from the impacts to the natural resources and from the response actions themselves.

3. Feasible restoration actions exist to address the natural resource injuries and losses, including lost human uses, resulting from the discharges of oil. Assessment procedures are available to scale the appropriate amount of restoration required to offset these ecological and human use service losses. During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Restoration Plan for public review and comment.

Based upon these determinations, the Trustees intend to proceed with restoration planning for the Incident or Incidents.

#### Administrative Record

The U.S. Department of the Interior, acting on behalf of the Trustees, is in the process of establishing and opening an Administrative Record ("AR") in compliance with 15 CFR 990.45 and applicable State authorities. The AR will be publicly accessible and include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident or Incidents. The AR will

be augmented with additional information over the course of the NRDA process. The availability of the AR will be addressed in one or more future notices and announcements. State-specific ARs may also be kept and will be made available by State trustees in their normal course of business.

#### Opportunity To Comment

The Trustees invite the public to participate in restoration planning for this Incident or Incidents in accordance with 15 CFR 990.14(d) and State authorities. The Trustees will be providing substantial opportunities for public involvement in the restoration planning for this Incident or Incidents. The opportunities for public involvement will be addressed in future notices and announcements.

Dated: September 2, 2010.

**Cindy Dohner,**

*DOI Authorized Official, U.S. Department of the Interior.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-ES-2010-N185; 10120-1112-0000-F2]

#### Availability of a Draft Environmental Assessment and Habitat Conservation Plan, and Receipt of Application for an Incidental Take Permit From Benton County, OR

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of application and availability of documents for public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that Benton County, Oregon, has submitted an application to the Service for an incidental take permit (permit) under the Endangered Species Act of 1973, as amended (ESA). Included with the application is a habitat conservation plan (HCP) and a proposed implementing agreement (IA). We also announce the availability of a draft environmental assessment (EA) under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4371 *et seq.*).

**DATES:** We must receive any written comments on the draft EA, HCP, and IA from interested parties no later than November 1, 2010.

**ADDRESSES:** *Documents:* The draft EA, HCP, and IA are available electronically

on the World Wide Web at <http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/>.

Alternatively, you may request documents and information by writing to Mikki Collins, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, OR 97266; or by faxing her at (503) 231-6195.

**Comments:** Submit comments by e-mail to [OFWocomment@fws.gov](mailto:OFWocomment@fws.gov); in the subject line, include the identifier "Benton County HCP." Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Mikki Collins, at the address or phone listed above.

**SUPPLEMENTARY INFORMATION:**

In accordance with section 10(a)(2)(A) of the ESA (U.S.C. 1531 *et seq.*), Benton County has prepared an HCP designed to minimize and mitigate take of the proposed covered species. The permit application is related to county construction activities, road maintenance, utilities construction, water system management, and prairie habitat management activities in Benton County, Oregon.

We furnish this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments we receive will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.

We may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Our regulations governing permits for endangered species are promulgated in 50 CFR 17.22, and regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The area proposed to be covered by the permit consists of private and non-Federal public lands in Benton County, and encompasses approximately 7,651 ha (18,906 ac). Other entities that are

considered cooperators in the HCP due to their land ownership and management activities include the City of Corvallis, Oregon Department of Transportation, Oregon State University, and the Greenbelt Land Trust. Approval of the HCP would allow us to issue a permit to Benton County that would authorize incidental take coverage and/or regulatory assurances for potential impacts on five federally listed species: Fender's blue butterfly (*Icaricia icarioides fenderi*) (endangered), Kincaid's lupine (*Lupinus sulphureus* ssp. *Kincaidii*) (threatened), Willamette daisy (*Erigeron decumbens* var. *decumbens*) (endangered), Bradshaw's lomatium (*Lomatium bradshawii*) (endangered), and the Nelson's checkermallow (*Sidalcea nelsoniana*) (threatened). The permit would also cover one candidate species for listing—Taylor's checkerspot butterfly (*Euphydryas editha taylorii*)—and one species of concern—the peacock larkspur (*Delphinium pavonaceum*). Although take of plant species is not prohibited under the ESA and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the HCP.

All seven species identified above will be covered under the permit on county-owned lands. The Fender's blue butterfly and the five plant species will be covered on land owned or managed by the City of Corvallis, Oregon State University, and the Oregon Department of Transportation. The Taylor's checkerspot is not known to occur on these properties. The Fender's blue butterfly will be the only covered species under the permit on the remaining private lands. The permittee would receive assurances under the Service's "No Surprises" regulation (50 CFR 17.22(b)(5) and 17.32(b)(5)) for all species included on the incidental take permit. For any currently unlisted covered animal species, take authorization would become effective concurrent with their listing, should the species be listed under the ESA during the permit term. Benton County has requested a permit term of 50 years.

Potential impacts are anticipated to result from (1) home, farm, and forest-related construction and utility construction/maintenance on private lands; (2) public service facility construction; (3) transportation and work within road rights of way; (4) water and wastewater management; (5) habitat restoration, enhancement, and management (including monitoring and plant material collection) activities

(both as a HCP mitigation measure and as a conservation activity at parks, natural areas, and open spaces); (6) agricultural activities; and (7) emergency response activities on non-Federal public lands and lands owned or held under conservation easement by specific conservation organizations. Under the permit, Benton County would have authorization to issue certificates of inclusion under the ESA permit to non-Federal landowners needing a County permit or agricultural building authorization.

The HCP includes estimates of permanent impacts over the 50-year permit term to include: the loss of 2.1 hectares (5.2 acres) of Fender's blue butterfly nectar habitat; 57 square meters (.01 acres) of Taylor's checkerspot habitat; 410 square meters (4,410 square feet) of Kincaid's lupine foliar cover; 222 Nelson's checkermallow plants; 2 Bradshaw's lomatium plants; 1 Willamette daisy plant; and 56 Peacock larkspur plants. A primary conservation measure of the HCP is the designation of over 200 hectares (500 acres) of Prairie Conservation Areas where habitat restoration and enhancement activities for the covered species will occur. The HCP also includes measures to avoid and minimize incidental take of the covered species.

We prepared a draft EA that analyzed the potential effects of implementing two alternatives on the human environment: A no-action alternative and a proposed action. Five additional alternatives were explored but omitted from further analysis.

We invite the public to comment on the HCP, draft EA, and draft IA during the 30-day public comment period (*see DATES*). Please direct comments to the contact listed in the **ADDRESSES** section, and any questions to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We provide this notice under ESA and NEPA regulations. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the ESA and NEPA.

Dated: September 1, 2010.

**Theresa E. Rabot,**

*Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.*

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**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLOPRP0600 L51010000.ER0000  
LVRWH09H0600; HAG 10-0338]

#### Notice of Availability of the Final Environmental Impact Statement for the West Butte Wind Power Right-of-Way, Crook and Deschutes Counties, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) Deschutes Resource Area, Prineville, Oregon, has prepared a Final Environmental Impact Statement (EIS) for the West Butte Wind Power Right-of-Way and by this Notice is announcing its availability.

**DATES:** A Record of Decision (ROD) may be signed no sooner than 30 days after the Environmental Protection Agency publishes its Notice of Availability of the Final EIS in the **Federal Register**. The availability of the ROD will be announced through a subsequent **Federal Register** notice.

**FOR FURTHER INFORMATION CONTACT:** Steve Storo, BLM West Butte Wind Power Right of Way Project Lead: telephone (541) 416-6885; address 3050 NE, 3rd Street, Prineville, Oregon 97754; e-mail: [or\\_west\\_butte\\_eis@blm.gov](mailto:or_west_butte_eis@blm.gov).

**SUPPLEMENTARY INFORMATION:** The applicant, West Butte Wind Power, LLC, has requested a right-of-way (ROW) authorization to construct 3.9 miles of road and an adjacent power transmission line on public land to support the construction of up to 52 wind turbines and ancillary facilities on adjacent private land. The portion of the project on public lands is the "Proposed Action." Actions occurring on private land are called "connected actions." The project is 25 air miles southeast of Bend, Oregon, located on the north side of US Highway 20. The Draft EIS analyzing impacts of the project was released for public comment on April 2, 2010 [75 FR 16828]. Approximately 36 comments were received on the Draft EIS. The comments were incorporated, where

appropriate, to clarify the analysis presented in the Final EIS. The Final EIS analyzes a No Action Alternative, the Proposed Action, and one other alternative. These alternatives were shaped in part by comments received from the public and internal BLM review.

**Alternative 1**—Proposed Action. This alternative includes the granting of a ROW for construction and operation of an access road and transmission line across lands administered by the BLM. Consideration of this alternative includes an analysis of the connected action of West Butte Wind Power constructing and operating a wind farm and associated facilities (e.g., access road, transmission line, substation, and an operations and maintenance building) on privately held lands.

**Alternative 2**—Northern Access Road Alternative. This alternative includes an analysis of an alternate main access road through the Juniper Acres Development, the facilities related to the connected action as described in Alternative 1, and a ROW through BLM-administered public land for a 3.9-mile transmission line.

**Alternative 3**—No Action Alternative. This alternative includes denying a ROW for construction and operation of an access road and transmission line across lands administered by the BLM.

The preferred alternative is Alternative 1, the Proposed Action.

Coordination with the U.S. Fish and Wildlife Service is occurring to ensure that an Avian Protection Plan is prepared that will sufficiently address overall project impacts to golden eagles.

**Deborah J. Henderson-Norton,**  
*BLM Prineville District Manager.*

**Authority:** 40 CFR 1506.6 and 1506.10

[FR Doc. 2010-24557 Filed 9-30-10; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Nimbus Hatchery Fish Passage Project, Lower American River, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of the Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of public meetings.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation,

the lead Federal agency, and the California Department of Fish and Game (CDFG), acting as the lead State agency, have made available for public review and comment a Draft EIS/EIR for the Nimbus Hatchery Fish Passage Project (Project). The purpose of the Project is to create and maintain a reliable system for collecting adult fish at the Nimbus Fish Hatchery (Hatchery). Reclamation maintains the Hatchery to meet mitigation obligations for spawning areas blocked by construction of Nimbus Dam. CDFG operates the Hatchery under a contract with Reclamation and is responsible for the management of the fishery resources within the adjacent lower American River. The Hatchery was constructed in 1955 under the American River Basin Development Act (October 14, 1949, 63 Stat. 852) along with Nimbus and Folsom Dams. The Draft EIS/EIR describes and presents the environmental effects of three action alternatives and the No-Action Alternative. Written comments will be accepted from agencies, organizations and individuals on the Draft EIS/EIR.

**DATES:** Submit written comments on the Draft EIS/EIR by November 30, 2010.

Public meetings will be held to receive comments on the Draft EIS/EIR and provide further clarification regarding the Project on Thursday, November 4, 2010 from 2 to 3:30 p.m. and from 6:30 to 8 p.m.

**ADDRESSES:** Send written comments on the Draft EIS/EIR to Mr. David Robinson, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630-1799; or e-mail at [IBRFOODHatchPass@usbr.gov](mailto:IBRFOODHatchPass@usbr.gov).

Public meetings will be held at the California State University Sacramento Aquatic Center, 1901 Hazel Avenue, Gold River, CA 95670.

Copies of the Draft EIS/EIR may be requested from Ms. Janet Sierzputowski at 916-978-5112, TTY 916-978-5608, or e-mail at [jsierzputowski@usbr.gov](mailto:jsierzputowski@usbr.gov). The Draft EIS/EIR is also accessible from the following Web sites: [http://www.usbr.gov/mp/nepa/nepa\\_projdetails.cfm?Project\\_ID=5216](http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=5216) or <http://www.usbr.gov/mp/ccao/hatchery/index.html>.

See the **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS/EIR are available for public review.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Robinson at the CCAO general telephone number 916-988-1707, TTY 916-989-7285, or e-mail at [IBR2FOODHatchPass@usbr.gov](mailto:IBR2FOODHatchPass@usbr.gov).