To: CN=Erin Foresman/OU=R9/O=USEPA/C=US@EPA[]
Cc: []
From: CN=Laura Fujii/OU=R9/O=USEPA/C=US
Sent: Fri 2/20/2009 5:27:13 PM
Subject: Fw: FRN: NOI (Third), NMF & SFW & IBR, Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta - comments due May 14, 2009 - Oops I forgot to forward this to you!
PDF Version
About PDF
lori_rinek@fws.gov
http://resources.ca.gov/bdcp/
http://resources.ca.gov/bdcp/

Hi Erin,
Yes, we received the NOI for the BDCP (see below)

I am the lead for ERO. I have been working with Carolyn Yale, Tom Hagler, and Karen Schwinn on this. We have provided short comment letters in response to the last two scoping notices (written mostly by Tom). Tom and Carolyn have also been tracking this project through their Bay Delta work and other networks. We all have concerns.

I am going to forward you a second email message where I posed a number of questions to Tom and Carolyn. Feedback from Carolyn is that we should comment on this 3rd NOI and that the Bay Delta team needs to have some internal discussions first.

Will you be the lead for 404 stuff? Are you interested in seeing our previous scoping comments (or did I remember to send them to you?).

Laura Fujii
Region 9 US Environmental Protection Agency
Environmental Review Office, CED-2
Communities and Ecosystems Division
75 Hawthorne St., San Francisco, CA. USA 94105
phone: 415-972-3852
fax: 415-947-8026
fujii.laura@epa.gov

----- Forwarded by Laura Fujii/R9/USEPA/US on 02/20/2009 09:20 AM -----

From: Laura Fujii/R9/USEPA/US
To: Carolyn Yale/R9/USEPA/US@EPA, Tom Hagler/R9/USEPA/US@EPA
Cc: Karen Schwinn/R9/USEPA/US@EPA
Date: 02/13/2009 01:53 PM
Subject: Fw: FRN: NOI (Third), NMF & SFW & IBR, Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta - comments due May 14, 2009 - DO WE NEED TO SEND ANOTHER LETTER?

Laura Fujii
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----- Forwarded by Laura Fujii/R9/USEPA/US on 02/13/2009 01:50 PM -----

From: Carol Sachs/R9/USEPA/US
To: Laura Fujii/R9/USEPA/US@EPA
Cc: Paul Amato/R9/USEPA/US@EPA, Karen Vitulano/R9/USEPA/US@EPA
Date: 02/13/2009 10:06 AM
Subject: FRN: NOI (Third), NMF & SFW & IBR, Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta

Laura
You've sent two previous letters. I don't know how much or how significant the changes are.
Paul & Karen, FYI as your agencies are involved.
Thank you
Carol

005125

Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta, CA
PDF Version (4 pp, 58K, About PDF)

[Federal Register: February 13, 2009 (Volume 74, Number 29)]
[Notices]
[Page 7257-7260]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr13fe09-60]

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
Bureau of Reclamation
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
[FWS-R8-2008-N0345; 1112-0000-80221-F2]

Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta, CA

AGENCIES: Fish and Wildlife Service, Interior; Bureau of Reclamation, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.
ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and notice of public scoping meetings.

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SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Fish and Wildlife Service (FWS), the Bureau of Reclamation (Reclamation), and the National Marine Fisheries Service (NMFS) will serve as co-lead agencies in the preparation of a joint EIS/EIR for the Bay Delta Conservation Plan (BDCP). The California Department of Water Resources (DWR) will serve as the lead agency under the California Environmental Quality Act (CEQA), which requires the preparation of the EIR component of the EIS/EIR. FWS will serve as the administrative lead for all actions related to this Federal Register Notice (Notice). The Federal co-lead agencies have requested that the U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) participate in the EIS/EIR as cooperating agencies for the purposes of their regulatory programs. The Corps and EPA have indicated that they will participate in such a role.

This Notice revises and updates the Notices of April 15, 2008 and January 24, 2008. In these previous Notices the description of the proposed action and possible alternatives were preliminary in nature and relied upon initial BDCP planning documents which describe the overall intent and direction of potential actions. Following publication of these previous Notices, preliminary scoping comments were submitted in writing and provided at preliminary scoping meetings. Some of the scoping comments indicated that more detailed descriptions of the proposed actions and alternatives are needed to allow specific comments on the range of alternatives and issues and levels of detail to be considered in the analyses of environmental consequences. Public comments received during this scoping period plus the previous two preliminary scoping periods will be considered during the preparation of the EIS/EIR. Comments submitted in response to the previous notices will be considered and do not need to be resubmitted.

The BDCP is a conservation plan being prepared to meet the requirements of the federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), and the State of California's Natural Communities Conservation Planning Act (NCCPA). DWR (and potentially State and Federal water contractors) intends to apply for ESA and CESA incidental take permits (ITP) for water operations and management activities in the Sacramento-San Joaquin Delta. These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from covered activities and conservation measures that will be identified through the planning process, including those associated with water operations of the Federal Central Valley Project (CVP), as operated by Reclamation, the California State Water Project (SWP), as operated by DWR, as well as operations of certain Mirant Delta LLC (Mirant Delta) power plants. Additionally, if feasible, the BDCP will be used as the basis for ESA compliance by Reclamation, including compliance with Section 7 of ESA in coordination with FWS and NMFS. Ultimately, the BDCP is intended to secure authorizations that would allow projects that restore and protect water supplies, water quality, and ecosystem health to proceed within a stable regulatory framework.

DATES: Ten public scoping meetings, open house format, will be held at various times and locations throughout California. See SUPPLEMENTARY

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INFORMATION section for public scoping meeting dates.

Written comments on the scope of the BDCP or issues to be addressed in the EIS/EIR must be received no later than May 14, 2009.

ADDRESSES: Send written comments to Lori Rinek, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825, e-mail to lori_rinek@fws.gov, or fax to (916) 414-6713. See SUPPLEMENTARY INFORMATION section for public scoping meeting addresses.

FOR FURTHER INFORMATION CONTACT: Lori Rinek, FWS, 916-414-6600; Patti Idlof, Reclamation, 916-978-5056; or Rosalie del Rosario, NMFS, 916-930-3600.

SUPPLEMENTARY INFORMATION:

Public Scoping Meeting Dates

Public scoping meetings will be held on the following dates and times:

- Monday, March 9, 2009, 6 p.m. to 10 p.m., Chico, CA.
- Tuesday, March 10, 2009, 6 p.m. to 10 p.m., San Jose, CA.
- Wednesday, March 11, 2009, 6 p.m. to 10 p.m., Bakersfield, CA.
- Thursday, March 12, 2009, 1 p.m. to 4 p.m., Los Angeles, CA.
- Monday, March 16, 2009, 6 p.m. to 10 p.m., San Diego, CA.
- Tuesday, March 17, 2009, 6 p.m. to 10 p.m., Merced, CA.
- Wednesday, March 18, 2009, 6 p.m. to 10 p.m., Davis, CA.
- Thursday, March 19, 2009, 1 p.m. to 4 p.m., Sacramento, CA.
- Monday, March 23, 2009, 6 p.m. to 10 p.m., Brentwood, CA.
- Tuesday, March 24, 2009, 6 p.m. to 10 p.m., Stockton, CA.
- Wednesday, March 25, 2009, 6 p.m. to 10 p.m., Fairfield, CA.
- Thursday, March 26, 2009, 6 p.m. to 10 p.m., Clarksburg, CA.

Public Scoping Meeting Addresses

Public scoping meetings will be held at the following locations:

- Chico--Masonic Family Center, 1110 West East Avenue, Chico, CA 95926.
- San Jose--San Jose Marriott, 301 South Market Street, Blossom Hill and Almaden Rooms, San Jose, CA 95113.
- Bakersfield--Bakersfield Marriott at the Convention Center, 801 Truxtun Avenue, Salon A and Hammons Rooms, Bakersfield, CA 93301.
- Los Angeles--Junipero Serra State Building, 320 West Fourth, Los Angeles, CA 90013.
- San Diego--Marina Village Conference Center, 1936 Quivera Way, Captains Room and Room C8, San Diego, CA 92109.
- Merced--Merced High School, 205 West Olive Avenue, Merced, CA 95344.
- Davis--Veterans Center, 203 East 14th Street, Davis, CA 95616.

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- Sacramento--Hyatt Regency, 1209 L Street, Sacramento, CA 95814.
- Brentwood--Brentwood Community Multipurpose Room, 730 Third Street, Brentwood, CA 94513.
- Stockton--Stockton Civic Memorial Auditorium, 525 North Center Street, Stockton, CA 95202.

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• Fairfield--Hilton Garden Inn, 2200 Gateway Court, Willow and Larkspur Rooms, Fairfield, CA 94533.
• Clarksburg--Clarksburg Community Church, 52910 Netherlands Avenue, Clarksburg, CA 95612.

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Lori Rinek at (916) 414-6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background Information

The BDCP is being prepared through a collaboration of State, Federal, and local water agencies, and Mirant Delta, an electric power generating facility located in West Pittsburg, California in Contra Costa County, under: (1) Section 10(a)(1)(B) of the ESA of 1973, as amended, and (2) the NCCPA, California Fish and Game Code, Section 2800 et seq., or Fish and Game Code Section 2081 of CESA. The BDCP is intended to provide (1) Reclamation the ability to obtain a Biological Opinion and incidental take statements (ITS) pursuant to Section 7 of ESA, and (2) the basis for the DWR (and potentially State and Federal water contractors) to apply for ITPs pursuant to Section 10 of ESA and California Fish and Game Code Section 2835 or 2081 for implementation of the BDCP.

DWR and Reclamation, along with the Metropolitan Water District of Southern California (MWD), the Kern County Water Agency (KCWA), the Santa Clara Valley Water District (SCVWD), Alameda County Flood Control and Water Conservation District, Zone 7 Water Agency (Zone 7), the San Luis and Delta-Mendota Water Authority (SLDMWA), the Westlands Water District (WWD), and Mirant Delta (known collectively as the ``Potentially Regulated Entities'' or PREs) are currently preparing the BDCP for existing and proposed covered activities within the Statutory Delta. Some elements of the BDCP will complement the actions identified in the State of California's Delta Vision process, which was a process convened by Governor Schwarzenegger to provide advice with respect to how to improve environmental conditions in the Delta while rendering it a more reliable source of water supply.

It is the goal of the PREs that the BDCP meets:

(1) The requirements of Section 10(a)(1)(B) of the ESA for the non-federal PREs and result in the issuance of ITPs from the FWS and NMFS to those PREs;

(2) The requirements of an ITP under the California fish and wildlife protection laws, either pursuant to Section 2835 or Section 2081 of the Fish and Game Code, resulting in take authority under either one of those statutes; and

(3) The requirements of the Section 7 consultation process under the ESA, resulting in the issuance of Biological Opinions, and ITSs, from the NMFS and FWS on specific activities of certain members of the PREs.

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Purpose and Need for Action

Background

This EIS is being developed for the following proposed actions and federal regulatory agency responses:

(1) DWR, Reclamation, other PREs, and possibly other persons or entities implementing the BDCP;

(2) DWR and possibly other PREs applying to the FWS for incidental take permits pursuant to the ESA section 10(a)(1)(B); and

(3) DWR and possibly other PREs applying to the NMFS for incidental take permits pursuant to the federal ESA section 10(a)(1)(B).

The proposed federal actions that are being evaluated in this EIS are:

(1) FWS issuing an ESA Section 10(a)(1)(B) permit(s);

(2) NMFS issuing an ESA Section 10(a)(1)(B) permit(s); and

(3) Reclamation's implementation of one or more components of the BDCP.

Reclamation, as a federal agency, obtains incidental take authorization through consultation with FWS and NMFS under Section 7 of the ESA. Reclamation will initiate Section 7 consultation with FWS and NMFS for any BDCP components to be implemented by Reclamation. Additionally, in a parallel yet separate process, Reclamation will be required to reinitiate Section 7 consultation on the long-term operation of the CVP, as coordinated with the SWP, to the extent that such coordinated operations may be modified to effectively be integrated with any operational or facility improvements that may occur from implementation of the BDCP.

Purpose

The purposes of the proposed actions are to achieve the following:

Respond to the applications for incidental take permits for the covered species that authorize take related to:

(1) The operation of existing SWP Delta facilities and construction and operation of facilities for the movement of water entering the Delta from the Sacramento Valley watershed to the existing SWP and CVP pumping plants located in the southern Delta;

(2) The implementation of any conservation actions that have the potential to result in take of species that are or may become listed under the ESA, pursuant to the ESA at section 10(a)(1)(B) and its implementing regulations and policies;

(3) The diversion and discharge of water by Mirant LLC for power generation in the Western Delta.

Improve the ecosystem of the Delta by:

(1) Providing for the conservation and management of covered species through actions within the BDCP Planning Area that will contribute to the recovery of the species; and

(2) Protecting, restoring, and enhancing certain aquatic, riparian, and associated terrestrial natural communities and ecosystems.

(3) Reducing the adverse effects to certain listed species of diverting water by relocating the intakes of the SWP and CVP;

Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of

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state and federal law and the terms and conditions of water delivery contracts held by SWP contractors and certain members of SLDMWA.

Need

Water for a wide range of in-stream, riparian and other beneficial uses, including drinking water for over 25 million Californians and irrigation water for agricultural lands in the Delta and the San Joaquin Valley, is currently routed through the Delta. While some beneficial water users depend on the Delta for only a portion of their water needs, others are highly or totally dependent on supplies from the Delta. Conflicts have arisen and intensified among users of Delta water as total volume of water used and competition for the finite quantity of water available to be applied among those uses has increased over time. Such conflicts are magnified in years with reduced

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precipitation in the watershed of the Sacramento and San Joaquin valleys.

Requirements have been established for the direction and magnitude of water flows moving through the Delta, and the volume of water and the timing requirements for its release associated with meeting the habitat requirements for threatened and endangered fish species. There exists a need to protect and recover these species. However, these requirements alone are unlikely to recover the species and they have also reduced the ability of the CVP and SWP to meet the quantity and timing of water delivered from the Delta for beneficial consumptive uses. Additionally, the levees in the Delta are at constant risk of failure from a number of causes, including seismic activity and sea level rise associated with global climate change. The ability to export water from the Delta for beneficial use would be compromised should one or more of these levees fail, resulting in an interruption of water supply for both urban and agricultural uses, as well as cause severe degradation of water quality in the Delta with potential adverse impacts upon the aquatic ecosystem and the ability to apply water from the Delta to beneficial use. Improvements to the conveyance system are needed to respond to these increased demands upon and risks to water supply reliability, water quality, and the aquatic ecosystem.

The EIS provides analysis for alternatives developed to address the purpose and needs identified above.

Project Area

The planning area for the BDCP will consist of the aquatic and terrestrial ecosystems and natural communities and, potentially, the adjacent riparian and floodplain natural communities within the Statutory Delta. The Statutory Delta includes parts of Yolo, Solano, Contra Costa, San Joaquin, and Sacramento counties. However, it may be necessary for the BDCP to include conservation actions outside of the Statutory Delta that advance the goals and objectives of the BDCP within the Delta, including as appropriate, conservation actions in the Suisun Marsh, Suisun Bay, and areas upstream of the Delta. Any conservation actions outside the Statutory Delta would be implemented

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pursuant to cooperative agreements or similar mechanisms with local agencies, interested non-governmental organizations, landowners, and others. The EIS/EIR project area for which impacts are evaluated may be different than the BDCP geographic scope.

Covered Activities

The BDCP covered activities may include, but are not limited to, existing or new activities related to:

(1) Existing Delta conveyance elements and operations of the CVP and SWP;

(2) New Delta conveyance facilities (including power line alignments) and operations of the CVP and SWP generally described in the BDCP November 2007 Points of Agreement (http://resources.ca.gov/bdcp/);

(3) Operational activities, including emergency preparedness of the CVP and SWP in the Delta;

(4) Operational activities in the Delta related to water transfers involving water contractors or to serve environmental programs;

(5) Maintenance of the CVP, SWP, and other PREs' facilities in the Delta;

(6) Facility improvements of the CVP and SWP within the Statutory Delta (California Water Code Section 12220);

(7) Ongoing operation of and recurrent and future projects related to other Delta water users, as defined by the BDCP Planning Agreement (http://resources.ca.gov/bdcp/
);

(8) Projects designed to improve Delta salinity conditions; and

(9) Conservation measures included in the BDCP, including, but not limited to, fishery related habitat restoration projects, adaptive management, and monitoring activities in the Delta.

Covered Species

Species proposed for coverage in the BDCP are species that are currently listed as Federal or State threatened or endangered or have the potential to become listed during the life of the BDCP and have some likelihood to occur within the project area. The covered species that are the initial focus of the BDCP include certain aquatic species such as:

(1) Central Valley steelhead Oncorhynchus mykiss;

(2) Central Valley Chinook salmon Oncorhynchus tshawytscha (spring-run and fall/late fall-runs);

(3) Sacramento River Chinook salmon Oncorhynchus tshawytscha (winter-run);

(4) Delta smelt Hypomesus transpacificus;

(5) Green sturgeon Acipenser medirostris;

(6) White sturgeon Acipenser transmontanus;

(7) Splittail Pogonichthys macrolepidotus; and

(8) Longfin smelt Spirinchus thaleichthys.

Other species that will be considered for inclusion in the BDCP include, but may not be limited to:

(1) Swainson's hawk Buteo swainsoni;

(3) Bank swallow Riparia riparia;

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(4) Giant garter snake Thamnophis gigas; and
(5) Valley elderberry longhorn beetle Desmocerus californicus dimorphus.
This list identifies the species that will be evaluated for inclusion in the BDCP as proposed covered species; however, the list may change as the planning process progresses. The participants anticipate that species may be added or removed from the list once more is learned about the nature of the covered activities and the impact of covered activities on native species within the planning area.

Alternatives

The BDCP will likely consist of three major elements: (1) Actions to improve ecological productivity and sustainability in the Delta; (2) potential capital improvements to the water conveyance system, and; (3) potential changes in Delta-wide operational parameters of the CVP and SWP associated with improved water conveyance facilities.
Potential habitat restoration measures that could improve ecological productivity and sustainability in the Delta may involve the restoration of floodplain; freshwater intertidal marsh; brackish intertidal marsh; channel margin, and riparian habitats. Floodplain restoration opportunities exist in the North Delta/Yolo Bypass and upper San Joaquin River areas; intertidal marsh restoration opportunities exist throughout the Delta and in Suisun Marsh. Channel margin habitat restoration opportunities exist for improving habitat corridors and as a component of floodplain restoration. Riparian habitat restoration opportunities exist as a component of floodplain, freshwater intertidal marsh, and channel margin habitat restoration.
Three general alternatives are being considered as they relate to the potential changes in the water conveyance system and CVP/SWP operations. These include: (1) A through-Delta alternative; (2) a dual conveyance alternative; and (3) an isolated facility alternative. In addition, the implications of taking no action, the No Action alternative, will be considered in the analysis. The dual conveyance alternative may include potential new points of diversion at various locations in the North Delta, facilities to move water from new points of diversion to the existing SWP and CVP pumping facilities in the South Delta, and continued use of the existing

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diversions in the South Delta. The fully isolated facility alternative would include potential new points of diversion at various locations in the North Delta and facilities to move water from new points of diversion to the existing SWP and CVP pumping facilities in the South Delta. The improved through-Delta alternative could include new temporary or permanent barriers to modify existing hydraulics or fish movement within the Delta, armoring of levees along Delta waterways to ensure continued conveyance capacity, and/or actions to improve conveyance capacity in existing Delta waterways.
New points of diversion could be located along the Sacramento River between South Sacramento and Walnut Grove. The new conveyance facility could extend from the new points of diversion to the existing SWP and CVP pumping facilities in the South Delta and be located either to the

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west or east of the Sacramento River. Potential CVP/SWP operations changes include the seasonal, daily, and real time amounts, rates, and timing of water diverted through and/or around the Delta. Potential corresponding changes to water exports could also be developed.

Other actions to reduce threats to listed fish that may be evaluated for implementation by the BDCP include measures to minimize other stressors. These other stressors may include: (1) Non-native invasive species; (2) toxic contaminants; (3) other water quality issues; (4) hatcheries; (5) harvest; (6) non-project diversions; and (7) commercial/recreational activities. Implementation of potential habitat restoration activities and measures to minimize other stressors will be evaluated throughout the Delta, and possibly upstream and downstream of the Delta, as appropriate to meet the objectives of the plan.

Preliminary locations, alignments, and capacities of new conveyance facilities, as well as habitat restoration activities and actions to address other stresses, to be evaluated in the EIS/EIR will be informed by the scoping process. In addition to the alternatives described above, other reasonable alternatives identified through the scoping process will be considered for potential inclusion in the alternatives analysis.

Statutory Authority

NEPA (42 U.S.C. 4321 et seq.) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA and its implementing regulations (40 CFR part 1500 et seq.; NOAA Administrative Order 216-6) (43 CFR Part 46), a reasonable range of alternatives to the proposed action are to be developed and considered in an EIS/EIR prepared by the FWS and NMFS. Alternatives considered for analysis in an EIS/EIR may include variations in the scope or types of covered activities; variations in the location, amount, and types of conservation measures and the timing of project activities; variations in permit duration; or a combination of these or other elements. In addition, as required by NEPA, the EIS will identify significant direct, indirect, and cumulative effects, and possible mitigation for those significant effects, on biological resources, land use, air quality, water quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental issues that could occur with the implementation of the proposed action and alternatives.

Request for Comments

The purpose of this notice is to advise other Federal and State agencies, affected Tribes, and the public of our intention to continue to gather information to support the preparation of an EIS/EIR, to obtain suggestions and information from other agencies and the public on the scope of alternatives and issues to be addressed in the EIS/EIR, and to identify important issues raised by the public related to the development and implementation of the BDCP. Written comments from interested parties are invited to ensure that the full range of alternatives and issues related to the development of the BDCP is

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identified. Comments during this stage of the scoping process will only be accepted in written form. You may submit written comments by mail, facsimile transmission, or in person (see ADDRESSES). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. Comments and participation in the scoping process are encouraged.

Before including your name, 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.

Ken McDermond,
Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, Sacramento, CA.

Mike Chotkowski,
Acting Regional Environmental Officer, Mid-Pacific Region, Bureau of Reclamation.

Russ Strach,
Assistant Regional Administrator, Protected Resources, Southwest Region, National Marine Fisheries Service.
[FR Doc. E9-3103 Filed 2-12-09; 8:45 am]
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