



Public Notice

U.S. ARMY CORPS OF ENGINEERS

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Subject: Proposed Regional General Permit and Proposed In-Lieu Fee Program for Butte Regional Conservation Plan (BRCP) Covered Activities

Action ID: SPK-2011-00467

Comments Period: November 13, 2015 – December 14, 2015

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) proposes to issue a Regional General Permit for activities that involve a discharge of dredged or fill material into waters of the United States covered by the Butte Regional Conservation Plan (BRCP), a proposed Habitat Conservation Plan under Section 10 of the Endangered Species Act. The proposed RGP would apply only to BRCP Covered Activities, as set forth in Sections 2.2 through 2.5 of the BRCP. The Butte County Association of Governments (BCAG) also proposes to establish an In-Lieu Fee Program (ILF Program) that would provide compensatory mitigation for BRCP Covered Activities authorized by Section 404 of the CWA within the BRCP Plan Area. This notice may also be viewed at the Corps web site at www.spk.usace.army.mil/Media/RegulatoryPublicNotices.aspx.

AUTHORITY: This RGP is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States. The ILF Program prospectus is being evaluated under 33 CFR Part 332.

LOCATION: The proposed RGP and ILF Program would be applicable to the BRCP's Plan Area, which encompasses approximately 564,219 acres of public and private lands (Figure 1-1 of the BRCP, and Figure 1 of the Prospectus). The Plan Area includes the western lowlands and foothills of Butte County bounded on the west by Tehama, Glenn, and Colusa counties; bounded on the south by Sutter and Yuba counties; bounded on the north by the boundary with Tehama County; and primarily bounded on the east by high elevation oak woodland natural communities.

ACTIVITIES COVERED BY THE PROPOSED RGP: The proposed RGP applies only to BRCP Covered Activities as identified in the attached Draft RGP.

Covered Activities under the proposed RGP include temporary and permanent discharges of dredged or fill material into waters of the U.S. for:

1. Residential, Commercial, Public, and Industrial Facilities: construction, expansion, and maintenance of residential, commercial, public, or industrial facilities (as described in Section 2.2.1.1 of the BRCP).

2. Recreation Facilities: construction, expansion, and maintenance of recreation facility development projects (as described in Sections 2.2.1.2 and 2.2.2.1 of the BRCP).

3. Transportation Facilities: construction, expansion, and maintenance of transportation facility development projects (as described in Sections 2.2.1.3 and 2.2.2.2 of the BRCP).

4. Pipeline Facilities: construction, expansion, and maintenance of pipeline facility development projects (as described in Sections 2.2.1.4 and 2.2.2.3 of the BRCP) including all activities associated with accessing, surveying, excavating, trenching, and constructing underground pipeline infrastructure; backfilling and compaction and any windrowing or storage of overburden material; and restoration of the construction site.

5. Utility Service Facilities: construction, expansion, and maintenance of utility services facility projects (as described in Sections 2.2.1.5 and 2.2.2.4 of the BRCP) including activities associated with construction and installation of electrical utilities, telecommunication lines, and natural gas transmission lines.

6. Waste Management Facilities: construction, expansion, and maintenance of waste management facility projects (as described in Sections 2.2.1.6, 2.2.2.5, 2.3.1.1, and 2.3.2.1 of the BRCP).

7. Wastewater Management Facilities: construction, expansion, and maintenance of wastewater management facility projects (as described in Sections 2.2.1.6, 2.2.2.5, 2.3.1.1, and 2.3.2.1 of the BRCP). With the exception of culverts placed in small intermittent drainages along roads within the project footprint of new facilities, activities associated with the construction of waste and wastewater management facility projects shall not include development of in-water structures.

8. Flood Control and Stormwater Management Facilities: construction, expansion, and maintenance of flood control and stormwater management facility projects (as described in Sections 2.2.1.7 and 2.2.2.6 of the BRCP). Covered activities associated with the construction of flood control and stormwater management facility projects shall not include development of in-water structures in natural channels.

9. Aquatic Habitat Restoration, Establishment, and Enhancement Activities: construction, expansion, and maintenance of aquatic resource habitat areas consistent with the Conservation Measures identified in Chapter 5 of the BRCP. This includes activities in waters of the U.S. associated with the restoration, enhancement, and establishment of non-tidal streams and non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

PROPOSED ILF PROGRAM: The Sponsor (BCAG) proposes to develop an ILF Program to provide compensatory mitigation for impacts to waters of the U.S., including wetlands, under Section 404 of the Clean Water Act, to mitigate for impacts to Federally- and State-listed species under the Endangered Species Act (ESA) and California Endangered Species Act (CESA), and to track mitigation requirements under the California Environmental Quality Act

(CEQA). The attached prospectus provides additional information on the proposed ILF program.

ADDITIONAL INFORMATION:

Background. In accordance with Corps regulations at 33 CFR 322.2(f), RGPs are DA authorizations that are issued on a regional basis for a category or categories of activities when: (a) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or (b) the general permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

The BRCP is a comprehensive regional joint Habitat Conservation Plan/Natural Community Conservation Plan, pursuant to the Endangered Species Act of 1973, as amended, and the California Natural Community Conservation Planning Act of 2002. The BRCP is designed to provide long-term conservation and management of natural communities, sensitive species, and the habitats upon which those species depend (including wetlands and other waters of the U.S.), while accommodating other important land uses. The BRCP's conservation strategy proposes to provide a regional approach for the long-term conservation of covered species and natural communities within the BRCP Plan Area while allowing for compatible future land use and development under county and city general plan updates and the regional transportation plans. The majority of these projects that result in the discharge of dredged or fill material into waters of the U.S. are evaluated and authorized under the Corps' Nationwide Permit Program. The BRCP permittees are any one of the eleven local agencies that have applied for coverage under the BRCP, which are: County of Butte (County), City of Oroville, City of Chico, City of Biggs, City of Gridley, BCAG, California Department of Transportation (Caltrans), Western Canal Water District (WCWD), Biggs-West Gridley Water District, Butte Water District, and Richvale Irrigation District.

The Butte County Association of Governments (BCAG), established in 1969, is a joint powers authority governed by a 10-member board of directors that includes all five members of the Butte County Board of Supervisors as well as one city council representative from each of the five incorporated cities in Butte County. BCAG is proposing the ILF Program to replace the loss of aquatic resource functions and services resulting from activities covered under the Butte Regional Conservation Plan (BRCP) and occurring in the BRCP Plan Area. The ILF Program Service Area (Service Area) would be the same as the BRCP Plan Area.

Environmental Setting. The BRCP Plan Area (or permit area) includes approximately 564,219 acres, including the western lowlands and foothills of Butte County. The BRCP Plan Area is bounded on the west by Tehama, Glenn, and Colusa Counties; bounded on the south by Sutter and Yuba Counties; bounded on the north by Tehama County; and bounded on the east by the upper extent of oak woodland natural communities. The BRCP Plan Area/RGP Permit Area was developed with a focus on the areas where growth and development may greatly affect state- and federally protected species and waters of the U.S.

The Plan Area contains six major natural communities and eight other land cover types. The six major natural communities addressed in the BRCP are oak woodland and savannah, grassland, riparian, wetland, aquatic, and agriculture. The wetlands in the Plan Area consists of vernal pools, emergent wetlands, managed wetlands, and managed seasonal wetlands. The grasslands natural community in the Plan Area comprises two types: grasslands and grasslands with vernal swale complexes. Grasslands with vernal swale complexes are dominated by networks of meandering swales that channel flow across the landscape among varying distributions and densities of vernal pools and are associated with mound and intermound topography. Emergent wetlands are scattered throughout the Plan Area and are frequently associated with streams, rivers, and areas that receive water in the form of agricultural runoff. Most of the managed wetlands are in the western portion of the Plan Area and are associated with the Butte Basin, the Sacramento River, and the Feather River. Managed wetlands are associated with private hunting clubs or federal and state wildlife refuges such as Gray Lodge Wildlife Area, Sacramento River National Wildlife Refuge, and the Oroville Wildlife Area.

The aquatic natural community type comprises open water, major canal, and stock pond land cover types. The aquatic natural community type is scattered throughout the Plan Area. Open water cover types consist of rivers and streams bordered by riparian and wetland cover types. Along valley floor streams (e.g., lower Butte Creek), aquatic habitat for fish and wildlife can expand seasonally during high flows to adjacent riparian, wetland, and floodplain habitats.

The proposed RGP and ILF Service Area lie within the drainage basin of the Feather and Sacramento Rivers and include portions of six HUC-8 watersheds:

- The Butte Creek watershed (HUC 18020158) constitutes approximately 52.2% of the Service Area.
- The Honcut Headwaters-Lower Feather watershed (HUC 18020159) constitutes 28.0% of the Service Area.
- The Big Chico Creek-Sacramento River watershed (HUC 18020157) constitutes 17.8% of the Service Area.
- The three remaining watersheds, Sacramento-Stone Corral (HUC 18020104), North Fork Feather (HUC 18020121), and Middle Fork Feather (HUC 18020123), constitute the remaining 2.0% of the Service Area.

Mitigation. The Corps requires that applicants consider and use all reasonable and practical measures to avoid and minimize impacts to aquatic resources. If the applicant is unable to avoid or minimize all impacts, the Corps may require compensatory mitigation.

OTHER GOVERNMENTAL AUTHORIZATIONS: Water quality certification or a waiver, as required under Section 401 of the Clean Water Act from the Central Valley Regional Water Quality Control Board is required for activities authorized under the proposed RGP. The Butte County Association of Governments (BCAG) has indicated they will apply for a programmatic 401 Water Quality Certification for the proposed RGP.

The Interagency Review Team responsible for the review and approval of the proposed ILF program has not been established but may include representatives from the Corps, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Department of

Fish and Wildlife, the Central Valley Regional Water Quality Control Board, or other agencies as appropriate.

HISTORIC PROPERTIES: The issuance of the proposed RGP itself will have no potential to affect cultural resources. However, the construction of activities under the authority of this RGP may affect cultural resources. The Corps is in the process of preparing a Programmatic Agreement for compliance with Section 106 of the National Historic Preservation Act.

ENDANGERED SPECIES: The Corps would initiate consultation with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the proposed RGP. The Corps would seek a programmatic biological opinion that incorporates by reference the conservation strategy, covered species, covered activities, measures and other primary elements of the HCP/NCCP.

ESSENTIAL FISH HABITAT: The Corps would request conservation recommendations from NMFS for adverse effects to essential fish habitat during Section 7 consultation with NMFS, pursuant to Magnuson-Stevens Fishery Conservation and Management Act.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The decision whether to issue the proposed RGP will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from proposed RGP, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposed RGP will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The proposed RGP's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed RGP. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny the proposed RGP. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

In addition, comments are used in the evaluation of the proposed ILF Program per 33 CFR Part 332.8 and in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act.

SUBMITTING COMMENTS: Written comments, referencing Public Notice SPK-2011-00467 on the proposed RGP and ILF program must be submitted to the office listed below on or before December 14, 2015

Krystal Bell, Senior Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1350
Sacramento, CA 95814-2992
Email: *Krystal.L.Bell@usace.army.mil*

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant or the Corps' project manager Krystal Bell, 916-557-7745, *Krystal.L.Bell@usace.army.mil*.

Attachments: Draft RGP, In-Lieu Fee Prospectus, and 1 drawing