

review. After consideration of comments received during the review period, the Recovery Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the draft Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the final Recovery Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 2004.

Dom Ciccone,

Acting Regional Director, Region 2.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take of the Houston Toad by Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (TE-078366-0) pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended (Act). The requested permit, which is for a period of 30 years, would authorize incidental take of the endangered Houston toad (*Bufo houstonensis*) during the routine maintenance and repair of existing facilities and installation of new facilities within the 142,526-acre covered area of Bastrop and Lee counties, Texas.

The Service and applicant have prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species and a decision under the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is

provided pursuant to section 10(c) of the Act and NEP regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 31, 2004.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Scott Rowin, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 am to 4:30 pm) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Please refer to permit number TE-078366-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT:

Scott Rowin at the U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490-0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicants: Aqua Water Supply Corporation, Lower Colorado River Authority, Bluebonnet Electric Cooperative, Inc., and Austin Energy have developed an HCP that specifies what steps the applicants will take to minimize and mitigate impacts to the Houston toad during routine activities including, but not limited to, maintenance, repair, upgrades, and new installation of linear and fixed foundation facilities. The Applicants cooperatively developed this alternative in order to provide tangible conservation measures for the Houston toad and wildlife in general, provide a reliable source of funding available for additional conservation initiatives, provide realistic and immediate solutions to business needs, and continue to provide timely and affordable services to local residents.

Issuance of the permit would authorize activities described above on approximately 6,792 acres of the 142,526-acre covered area. Facilities already in existence cover approximately 4,241.2 of the 6,792 acres. Coverage of the remaining 2,550.4 acres will result from the installation of new facilities. Many existing facilities (on approximately 2,240.8 acres) occur within right-of-ways (ROW) (primarily road ROWs) managed and maintained by other entities. The Applicants estimate that 2,023.5 acres of the anticipated future facilities would be placed within similar ROWs. The remaining 526.9 acres of new facilities would likely be constructed outside of existing roadway ROWs and throughout the covered area. Installation of new facilities would be accomplished gradually over the life of the permit.

Both the Service and Applicants agree that not all portions of the covered area contain suitable Houston toad habitat, and not all covered activities would result in take of the Houston toad. However, in an effort to efficiently and effectively allow normal business practices to continue, and to compensate for any impacts to the Houston toad, the Applicants propose to mitigate for all activities performed within the covered area as described in Sections 6.2.1.2, 6.2.1.3, and 6.2.2 of the EA/HCP, which would provide mitigation fees throughout the life of the permit and thus provide a substantial and dependable source of funds for toad conservation; an expected \$1,866,354 over the life of the permit. The Applicants proposed this mitigation strategy so that the cost of mitigation could be spread over the life of the permit. Additionally, under this strategy the costs associated with mitigation could be incorporated into long-term budgeting and planning. Mitigation would occur regardless of whether the activities described above would result in take of the Houston toad.

Susan MacMullin,

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

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