PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

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APPLICATION FOR PERMIT

Mojave Water Agency Water Supply Reliability and Groundwater Replenishment Project ("Mojave River Recharge")

Public Notice/Application No.: SPL-2012-00464-BEM
Project: Mojave River Recharge Project
Comment Period: September 27, 2012 through October 27, 2012
Project Manager: Brianne McGuffie; (213)-452-3419; Brianne.E.Mcguffie@usace.army.mil

Applicant

Mojave Water Agency
C/o Mr. Gary Martin
13846 Conference Center Drive
Apple Valley, CA 92307
(760)-946-7030

Contact

RBF Consulting, Inc.
C/o Mr. Wesley Salter
14725 Alton Parkway
Irvine, California 92618
(949)330-4176

Location
The proposed project is located within the Mojave River, north of Juniper Road and south of Poppy Road in the Cities of Hesperia and Apple Valley, San Bernardino County, California (center: 34.410105, -117.235130).See attached figures.

Activity
To concentrate recharge facilities in the bottom portion of the Mojave River by the use of in-channel temporary spreading basins.

Interested parties are hereby notified that an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that support the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied. Comments should be mailed to:

LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O. BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

Alternatively, comments can be sent electronically to: Brianne.E.Mcguffie@usace.army.mil

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed 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 the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers 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 activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the 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.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made that an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires that any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. For any proposed activity on Tribal land that is subject to Section 404 jurisdiction, the applicant will be required to obtain water quality certification from the U.S. Environmental Protection Agency.

Coastal Zone Management-This project is located outside the coastal zone and preliminary review indicates that it would not affect coastal zone resources. After a review of the comments received on this public notice and in consultation with the California Coastal Commission, the Corps will make a final determination of whether this project affects coastal zone resources after review of the comments received on this Public Notice.

Essential Fish Habitat- Preliminary determinations indicate the proposed activity would not adversely affect essential Fish Habitat. Therefore, formal consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is not required at this time.

Cultural Resources- The cultural resources survey and proposed mitigation measures in the 2006 FEIR Cultural resources surveys cover all of the area of, and facilities constructed in, the Mojave River well field area and all well field delivery pipelines. However, the 2006 FEIR noted well sites located in developed areas were not surveyed because of their disturbed condition. Therefore, the applicant did not perform any evaluation of cultural resources of the Mainstem Mojave River because a) the river is subject to infrequent but significant scouring flows, sediment transport, and subsequent sediment deposition and b) grading activity to push up low sand berms in the channel would not extend below the level of recent scour/deposition and thus no significant cultural resources would be encountered. The MWA has selected the proposed project site in part to avoid potential adverse impacts to previously identified cultural resources, including prehistoric and historic archeological sites, known locations of importance to Native Americans, human remains, and historic buildings and structures. This review constitutes the extent of cultural resources investigations by the District Engineer, and he is otherwise unaware of the presence of such resources.

Endangered Species- As a result of a Reconnaissance Biological Survey Report for the Mojave River Recharge project conducted by Tom Dodson & Associates (TDA), in March 2009, focused surveys were conducted for the southwestern arroyo toad (*Bufo calfornicus*) and the Federally-threatened desert tortoise (*Gopherus agassizii*).

Desert tortoise protocol (FWS, 1992) surveys were performed and no tortoise sign was found. TDA concluded the desert tortoise is absent from the project site and adjacent survey areas. The California Aqueduct to the south and State Route 395 are impermeable and permeable barriers, respectively, to any movement of desert tortoise from these directions, and surrounding development further isolates the project area. Given the lack of recent documentation of desert tortoise in the proposed project vicinity and the disturbed, isolated nature of the proposed project site, the Corps has determined the proposed project would have no effect upon the desert tortoise.

Marginally suitable habitat for the Arroyo toad exists on site and in the near vicinity and there are records of arroyo toad in the Mojave River, upstream of the project site near Arrowhead Lake Road. As a result of the survey efforts, no egg masses, larvae or juvenile arroyo toads were detected during the daytime component of the surveys and no adult arroyo toads were heard calling or seen moving during the nocturnal components of the surveys. Based on the negative findings of these surveys, which were conducted per "Survey Protocol for the Arroyo Toad (FWS, 1999), arroyo toads are considered to be absent from the project area. Additionally, the project is not located in the designated critical habitat of the Arroyo toad. The Corps has preliminarily determined the proposed project would have no effect upon the Arroyo toad.

Based on all of the above information, the Corps has preliminarily determined the proposed activity would not affect federally-listed endangered or threatened species, or their critical habitat. Therefore, formal consultation under Section 7 of the Endangered Species Act does not appear to be required at this time.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material in to a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). Because no fills are proposed within special aquatic sites, identification of the basic project purpose is not necessary. The project is water dependent.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose is to construct a groundwater recharge facility within the Mojave Watershed (HUC # 18090208) where the desired passive (non-injection) aquifer recharge is 44,400 acre-feet per year.

Additional Project Information

Background-

The Mojave Water Agency (MWA) was formed by an act of the California Legislature in 1959 for the management of groundwater resources in portions of the Mojave Basin and Morongo Basin, has a service area of over 4,900 miles and has its primary function of the utilization of available water supplies in a manner consistent with California Water Code Section 79562.5(b). The MWA holds a State Water Project (SWP) contract and utilizes various facilities to import and distribute water to replenish groundwater basins and to meet the obligations of the Mojave Basin Area and Warren Valley judgments related to groundwater supply. The MWA operates under the Mojave Basin Area Judgment, which sets limits on the amount of groundwater production that can occur in each of the Mojave Basin's subareas without incurring an obligation to purchase imported water. The MWA also

operates under a Regional Water Management Plan (RWMP), which was revised in 2004, adopted on February 24, 2005, and defines the MWA's overall water management objectives for the period of 2004 through 2020. A Final Program Environmental Impact Report (SCH#2003101119) was prepared and certified for the 2004 Water Management Plan Update (WMP). The 2004 RWMP identifies a variety of potential facilities that might be developed to balance future water demands with available supplies and to maximize the overall beneficial use of water throughout the MWA's service area. The MWA also prepared and certified a 2006 Final Project Environmental Impact Report (FEIR) for the MWA Water supply Reliability and Groundwater Replenishment Program. The 2006 Project FEIR identified and analyzed impacts of facilities that included enhanced groundwater recharge and extraction with ancillary delivery pipelines pump stations and treatment facilities. The 2006 FEIR also discussed implementation of several potential water banking programs including development of facilities required to increase the MWA's return capacity to Metropolitan Water District (MWD), including the use of reservoir storage to meet peak seasonal water demands when conveyance capacity may be limited.

The MWA manages six major basins within its service area, of which five are sub-basins of the larger Mojave River Basin. The adopted WMP projected that groundwater overdraft, combined with expected growths and associated increasing demand for water, were projected to result in substantial groundwater recharge requirement by 2020. The 2004 WMP notes that there are two fundamental actions that could be taken to address the problem of groundwater overdraft and future growth/water demand: 1) supply enhancement projects, either involving groundwater recharge or an increase in groundwater efficiency; and 2) management actions involving conservation, storage agreements, and water transfers/water banking.

Between 1978 and 2001, the MWA's SWP contract for water supply was significantly under-utilized. Had the MWA's taken delivery of the full amount of its SWP contract water supply during those 2 years, it may have been possible to substantially reduce or fully offset groundwater overdraft; however, the MWA's ability to take delivery of its SWP supply is affected by: 1) lack of sufficient facilities to recharge and store SWP contract water; and 2) funding limitations. In 2006, the MWA certified the 2006 FEIR, which address these two issues. The proposed Water Supply Reliability and groundwater Replenishment Program (R^3), as described and analyzed in the 2006 FEIR, has evolved into what is now titled the Regional Recharge and Recover Project, a phased project designed to address the MWA's previously identified facilities storage, recharge, and funding issues. The MWA is currently implementing portions of Phase I of the R^3 Project, which consists of the facilities originally described in the "Minimum Facilities Alternative" and "Small Projects Alternative" analyzed in the 2006 FEIR. Since certification of the 2006 EIR, MWA has proceeded with Project design efforts and related technical studies consistent with the overall scope of the 2004 FEIR and 2006 FEIR.

The MWA has a SWP contract for a maximum of 75,800 acre-feet of water per year. The MWA's capacity to utilize the SWP water via recharge and extraction has been limited because they do not have the facilities in place to manage the storage and recovery of that amount of water in the basins. Thus, the under-utilization of available SWP water supply has been offset by increasing reliance on local groundwater supplies, resulting in continued over drafting of the basins. The MWA has proposed to construct new recharge facilities and store SWP contract water to reduce and offset groundwater overdraft issues.

Project description-

The proposed project would concentrate recharge facilities in the bottom portion of the Mojave River by the use of in-channel temporary spreading basins. Recharge facilities would consist of a series of temporary in-channel recharge basins created by the construction of temporary 2-3 foot high sand

berms within an area of approximately 300 acres. These berms would be pushed up using a scraper or dozer. It is anticipated that natural flows would wash out the temporary sand berms, necessitating periodic reconstruction. The proposed temporary facilities would serve to retard and spread water delivered to the river for recharge. These in-channel recharge areas would receive deliveries from a combination of scheduled, controlled releases from Silverwood Lake, releases from the existing Rock Springs outlet, and releases from the new South of Rock Springs Outlet. The proposed recharge area consists of approximately 292.30 acres of waters of the US. The proposed project does not require any fill material to be imported for berm construction. Each berm would consist of approximately 1.0 cy of cut/fill per linear feet of levee. Berms would be field constructed, as needed. The length of each levee would vary due to contours of the Mojave River (please see attached plans).

Proposed Mitigation– The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: The proposed project is dependent on its location for recharge to occur. According to the applicant, no other non-jurisdictional areas provide the required infiltration rates. Additionally, the MWA received a Clean Water Act Section 404 Nationwide permit (SPL-2009-00813) on 4 May 2010 for the construction of the South of Rock Springs Outlet which will provide SWP Water to the proposed recharge project. Use of the Mainstem Mojave River channel for recharge will have no direct effects on habitat because construction in the riverbed would be restricted to areas 100 feet away from native habitats. The MWA has selected the proposed project site in part to avoid potential adverse impacts to State and Federally-listed species, including Mojave ground squirrel, burrowing owls, arroyo toad, desert tortoise, and sensitive native vegetation types, including creosote bush scrub, alkali desert scrub, and Joshua trees. Should a special status species be identified in or adjacent to the site prior to proposed project construction, the MWA's biological staff would implement an environmental awareness program for construction and maintenance personnel. MWA would implement best management practices to avoid construction runoff during construction activities.

Minimization: Recharge may under some conditions raise groundwater levels. Phreatophyte vegetation may colonize these areas. Both MWA and flood control officials have programs for removal of exotic phreatophyte species such as tamarisk, and would take action to do so if they are found. These on-going, existing programs would reduce the potential for phreatophytes to colonize the proposed river reach. Additionally, construction equipment will enter the river at locations currently used for access. All in-river work would be conducted during daylight hours and in periods of no natural flow in the river.

Compensation: No permanent loss of waters of the US would occur as a result of the proposed project. No mitigation, other than standard Best Management Practices, is proposed by the applicant at this time.

For additional information please call Brianne McGuffie at 213-452-3419 or via e-mail at Brianne.E.Mcguffie@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.

Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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