

Compensation Determination Plan (RCDP) for the August 27, 1998, Clinch River Chemical Spill in Tazewell County, Virginia. The RCDP describes the trustee's proposal to restore natural resources injured as a result of a release of hazardous substances.

**DATES:** Written comments must be submitted on or before June 30, 2002.

**ADDRESSES:** Requests for copies of the RCDP may be made to the U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Written comments or materials regarding the RCDP should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804-693-6694 x107 for further information.

**SUPPLEMENTARY INFORMATION:** On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,350 gallons of Octocure 554-revised, a rubber accelerator, into an unnamed tributary about 530 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and caused a significant fish kill. The spill also killed aquatic benthic macroinvertebrates for about 6.6 miles downstream. Using a conservative correction factor, an estimated 18,600 or more freshwater mussels were killed by the spill, including 750 individuals of 3 federally endangered mussel species. This spill is likely the single largest take of federally listed endangered species since the enactment of the Endangered Species Act. This spill destroyed one of the last two known remaining reproducing populations of the critically endangered tan riffleshell mussel.

Under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance \* \* \* and may seek to recover those damages." Natural resource damage assessments (NRDA) are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The NRDA process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the

appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace and/or acquire equivalent resources for injured or lost resources.

The DOI is the sole acting federal natural resource trustee for this case. The DOI has designated the FWS to act as its authorized official with regard to this case. An assessment plan (AP) was developed by the FWS with public input in April 2001. The AP outlined a set of studies that were designed to identify and quantify natural resource injuries that resulted from the August 27, 1998 release. The assessment phase of this NRDA has been completed and the results of all injury assessment studies have been reviewed by the FWS. This RCDP has been developed in order to publish the results of the injury assessment studies and to consider a number of restoration alternatives that will make the public whole again for their natural resource loss. Cost estimation methodologies and general environmental consequences of each restoration alternative are considered and a preferred restoration alternative is proposed. The proposed preferred alternative includes propagation of freshwater mussels, riparian habitat protection, and community education.

Interested members of the public are invited to review and comment on the RCDP. Copies of the RCDP are available for review at the FWS's Virginia Field Office in Gloucester, Virginia and at the FWS's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210. Written comments will be considered and addressed in the final RCDP.

**Author:** The primary author of this notice is John Schmerfeld, U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

**Authority:** The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*) and the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11.

Dated: April 24, 2002.

**Mamie A. Parker,**

*Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Designated Authorized Official.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of the Proposed Safe Harbor Agreement for Robert Mondavi Winery, San Luis Obispo County, California

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that Robert Mondavi Winery (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service. The Agreement provides for management measures to aid in the conservation of the threatened California red-legged frog (*Rana aurora draytonii*), the endangered least Bell's vireo (*Vireo bellii pusillus*), and the endangered Southwestern willow flycatcher (*Empidonax traillii extimus*) on a vineyard property operated by the Applicant in San Luis Obispo County, California. The proposed duration of both the Agreement and permit is 33 years.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

**DATES:** Written comments must be received by 5:00 p.m. on June 7, 2002.

**ADDRESSES:** Comments should be addressed to Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003, facsimile number (805) 644-3958 (see Public Review and Comment section below).

**FOR FURTHER INFORMATION CONTACT:** Valary Bloom, Fish and Wildlife Biologist, at the above address or by calling (805) 644-1766.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to

implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). The Applicant has developed the proposed Agreement for the conservation of the California red-legged frog, least Bell's vireo, and Southwestern willow flycatcher on Mondavi's Cuesta Ridge Vineyard in San Luis Obispo County, California. The Agreement calls for the implementation of a riparian restoration project along an approximately 2-kilometer segment of an ephemeral stream known as Taco Creek.

The proposed riparian restoration program consists of efforts to reduce or eliminate yellow starthistle and other non-native vegetation, establish native riparian vegetation in which least Bell's vireos and Southwestern willow flycatchers may nest, and enhance pools to create desirable breeding conditions for the California red-legged frog. The Agreement also contemplates the possibility of measures to reduce competition from non-native bullfrogs and nest parasitism by brown-headed cowbirds.

Although no least Bell's vireos, Southwestern willow flycatchers, or California red-legged frogs are currently known to be in the immediate vicinity of the project area, the proposed project is designed to produce a conservation benefit for each of these species. The least Bell's vireo and Southwestern willow flycatcher are both threatened with loss and degradation of the riparian habitats with which they are obligatorily (vireo) and strongly (flycatcher) associated. Both species are likely to benefit through the provision of suitable habitat into which dispersing individuals from expanding populations elsewhere can move. The California red-legged frog is threatened by the loss or degradation of native riparian habitat, and predation by or competition with non-native species, most especially the bullfrog. The Agreement is likely to result in enhanced breeding habitat for the frog, improved cover in and near that habitat, and reduced threats from bullfrogs.

The conservation measures set forth in the Agreement are expected to result in the following net conservation benefits to the covered species: (1) Increased availability of suitable breeding and foraging habitat through

planting of native riparian vegetation and control of non-native weedy species; (2) reduced fragmentation, and increased connectivity of populations in the general area; (3) reduced numbers of non-native bullfrogs in the general vicinity of the project; (4) reduced threat of nest parasitism by brown-headed cowbirds; (5) likelihood of increased population sizes of the covered species in the general area; and (6) insurance against the loss of these species in the general area as a result of habitat loss or other factors elsewhere.

Consistent with the Service's Safe Harbor policy and regulations, the Service proposes to issue a permit to the Applicant authorizing incidental take as a result of normal viticultural activities on the enrolled property. Normal viticultural activities include planting, harvesting, weed and insect control, pruning, mowing, discing, operation of vehicles and farm equipment, and similar activities. The permit would also authorize take incidental to the habitat restoration and maintenance activities planned for the Taco Creek project area, including weed control and planting of native vegetation, pool enhancement, bullfrog control, etc.

This Agreement and permit will also allow the Applicant to remove the habitat improvements and return the area to its prior, or baseline condition at the end of the term of the Agreement, if so desired by the Applicant.

The Service has made a preliminary determination that approval of the Agreement qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the Agreement would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Agreement would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

## Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office (**ADDRESSES** section above).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and Agreement, including names and addresses, will become part of the Administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

We will evaluate the permit application, the Agreement, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the three covered species incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: May 1, 2002.

**Mary Ellen Mueller,**

*Manager, California/Nevada Operations Office, Sacramento, California.*

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