

United States Department of the Interior
U.S. Fish and Wildlife Service
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In Reply Refer To:
AESO/SE
02-21-03-F-0046 R2

July 26, 2005

Ms. Elaine Zieroth
Forest Supervisor
Apache-Sitgreaves National Forest
P.O. Box 640
Springerville, Arizona 85938-0640

RE: Awtrey (formerly Coleman) and Marks Ditch Diversion Repair

Dear Ms. Zieroth:

Thank you for your request for reinitiation of formal consultation with the U.S. Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your June 20, 2005, request was received on June 22, 2005. This reinitiated biological opinion is based on our review of your June 16, 2005, biological assessment and evaluation, the April 9, 2004, and April 21, 2003, biological opinions on the proposed action, telephone conversations with Bill Wall of your staff, and other sources of information. The proposed action is to provide temporary repairs to two diversion structures and provide reasonable maintenance activities until a complete restructuring of the diversion can be completed between September 2005 and November 2006. The two diversion structures are located on the Blue River in Greenlee County, Arizona (Figures 1-3).

Previous consultation evaluated the same proposed action, and effects to listed species were addressed in two biological opinions dated April 9, 2004 and April 28, 2004. A copy of the April 28, 2003, biological opinion is included for your reference. Delays in project implementation now necessitate extending the duration of the proposed action through November 30, 2006. At issue are impacts that may result from the proposed project on loach minnow (*Tiaroga cobitis*) and Chiricahua leopard frogs (*Rana chiricahuensis*). In addition, the Forest determined that the proposed action will not jeopardize the continued existence of the Mexican gray wolf (*Canis lupus baileyi*) and is not likely to adversely affect spokedace (*Meda fulgida*), razorback suckers (*Xyrauchen texanus*), or bald eagles (*Haliaeetus leucocephalus*). We concur that the proposed action is not likely to adversely affect spokedace, razorback suckers, or bald eagles and that the project will not jeopardize the continued existence of the Mexican gray wolf. Details for these concurrences remain the same as those in the provided in Appendix A of the April 28, 2003, biological opinion.

Your June 20, 2005, biological assessment evaluated the proposed action from May 1, 2005 through November 30, 2006. However, this biological opinion addresses those actions that occur after the date of this opinion.

Consultation History

- February 05, 2002 – Forest Service (FS) contacted the Fish and Wildlife Service (FWS) concerning work to diversion structures in the Blue River.
- April 03, 2002 – Meeting with FS, U.S. Army Corps of Engineers, and FWS to discuss unauthorized repairs to diversion structures on the Blue River.
- November 22, 2002 – Letter from the FWS to the FS concerning the Blue River diversions, repair, and maintenance.
- April 9, 2003 – FWS received a draft Biological Assessment and Evaluation for the Coleman and Marks ditch diversion repair project.
- April 15, 2003 – FWS received final BAE including a request for an expedited consultation.
- April 28, 2003 – A final biological opinion was sent to the FS.
- March 29, 2004 – FWS received a final BAE for reinitiation of the Awtrey (formerly Coleman) and Marks Ditch Diversion Repair. The FS was unable to complete a permanent structure for irrigation by April 12, 2004. Therefore, the FS proposed to repeat the same action as proposed in 2003, to cover maintenance from April 2004 through May 1, 2005. The FS anticipated that a permanent structure will be completed between June 2004 and November 2004. This permanent structure will require additional consultation.
- August 31, 2004 – Critical habitat designation for loach minnow and spinedace (65 FR 24331, April 25, 2000) was vacated by court order No. CIV 02-0199 JB/LCS.
- May 2005 – FS began informal discussions on the need to reinitiate consultation. Because of the ongoing need to divert water, the FS has requested an expedited consultation without reviewing a draft biological opinion.
- June 22, 2005 – FWS received a final BAE for reinitiation of the Awtrey and Marks Ditch Diversion Repair. The FS was unable to complete a permanent structure for irrigation by November 2004. Therefore, the FS is proposing to repeat the same action as proposed in 2003 and 2004 again this year (May 2005 – November 2006). The FS anticipates that a permanent structure will be completed between September 2005 and November 2006. This permanent structure will require additional consultation.

BIOLOGICAL OPINION

We believe that the biological opinion remains the same as the April 28, 2003 biological opinion for the proposed action. The description of the proposed action remains the same except for the timeframe in which the work may occur and the option to use jersey barriers for the diversion structure. The original opinion allowed for only one year of temporary repairs (April 12, 2003-April 12, 2004). The second opinion added another year of temporary repairs to the proposed action (April 12, 2003 – April 30, 2005). This re-initiation extends the proposed action by another year and half (through November 30, 2006). The status of the species, environmental baseline, effects of the action, cumulative effects, and conclusions remain the same as the April 28, 2003, biological opinion. The incidental take statement remains in effect; however, the amount or extent of take will occur yearly for 2005 and half of 2006 as well. Therefore, the reasonable and prudent measures and associated terms and conditions remain the same as in the April 28, 2003, biological opinion and shall be implemented in 2005 and 2006 until the project is complete.

The following is an updated incidental take statement for the proposed project:

AMOUNT OR EXTENT OF TAKE

Loach minnow

The Fish and Wildlife Service anticipates that all loach minnow in the area that will undergo electroshocking will be taken as a result of this proposed action. The incidental take is expected to be in the form of death, capture, or harassment. Death will occur to some individuals due to electroshocking and operation of the backhoe in the active channel. Harassment will occur to individuals from the electroshocking and due to the increase in sedimentation from the project. Maintenance of the diversion ditch is also expected to harass loach minnow downstream of the project area. Total take is estimated to be 10 fish per year.

Chiricahua leopard frogs

The Fish and Wildlife Service anticipates that all Chiricahua leopard frogs caught during electroshocking will be taken as a result of this proposed action. The incidental take is expected to be in the form of death, wounds, trapping, or harassment. Death will occur to some individuals due to electroshocking and operation of the backhoe in the active channel. Harassment will occur to individuals from the electroshocking and due to the increase in sedimentation from the project. Total take is estimated to be 5 frogs and 5 tadpoles per year.

This concludes reinitiation of formal consultation on the proposed action. Please note that the reinitiation clause from the original opinion remains the same.

The Fish and Wildlife Service appreciates the Forest Service's efforts to identify and minimize effects to listed species from this project. For further information please contact Jennifer Graves (x232) or Debra Bills (x239). Please refer to the consultation number, 02-21-03-F-0046 R2, in future correspondence concerning this project.

Ms. Elaine J. Zieroth

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Sincerely,

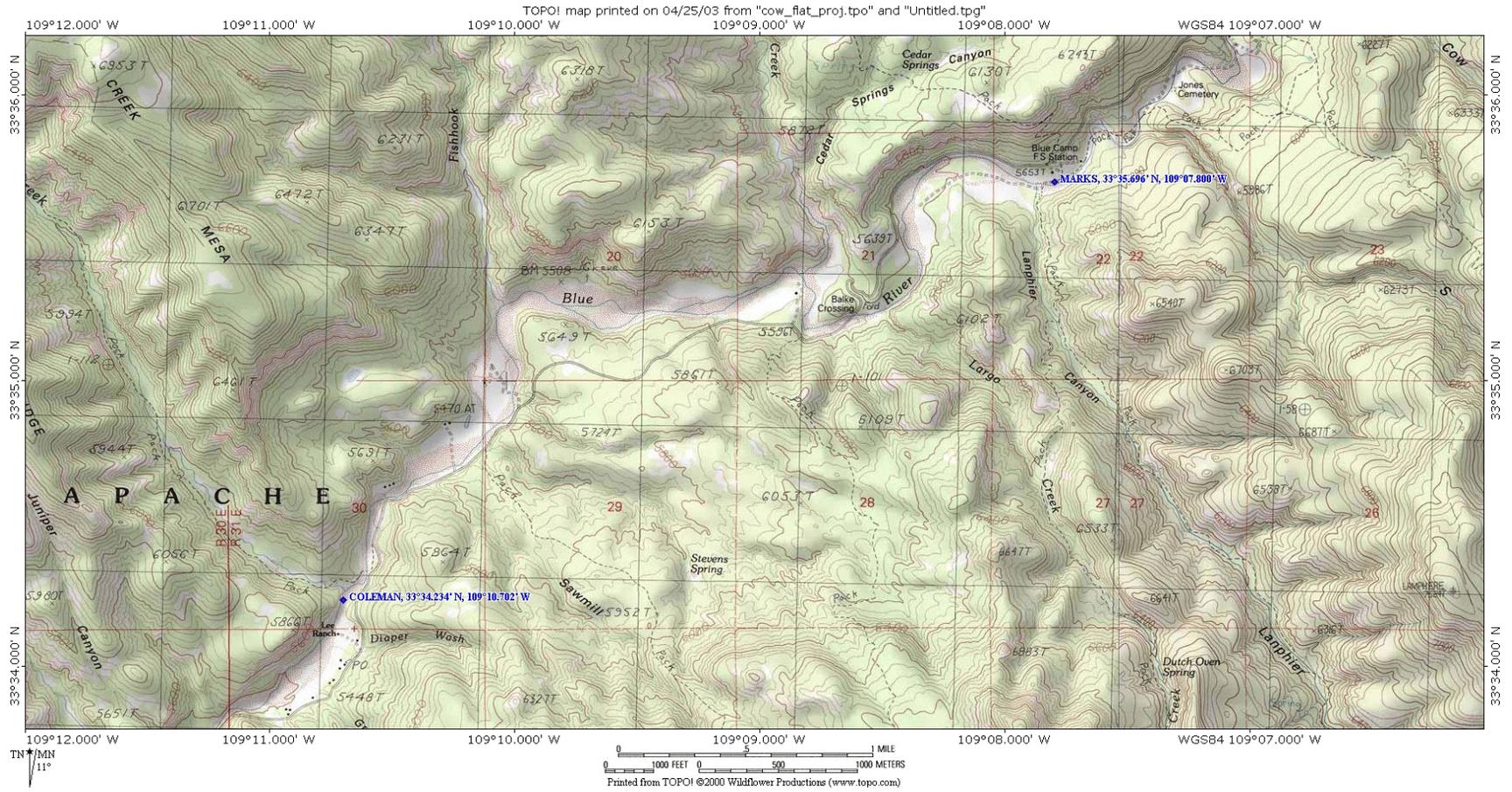
/s/ Steven L. Spangle
Field Supervisor

Enclosure

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Field Supervisor, Fish and Wildlife Service, Albuquerque, NM
Project Leader, Fisheries Resources Office, Pinetop, AZ
District Ranger, Alpine Ranger District, Alpine, AZ (Attn: Bill Wall)

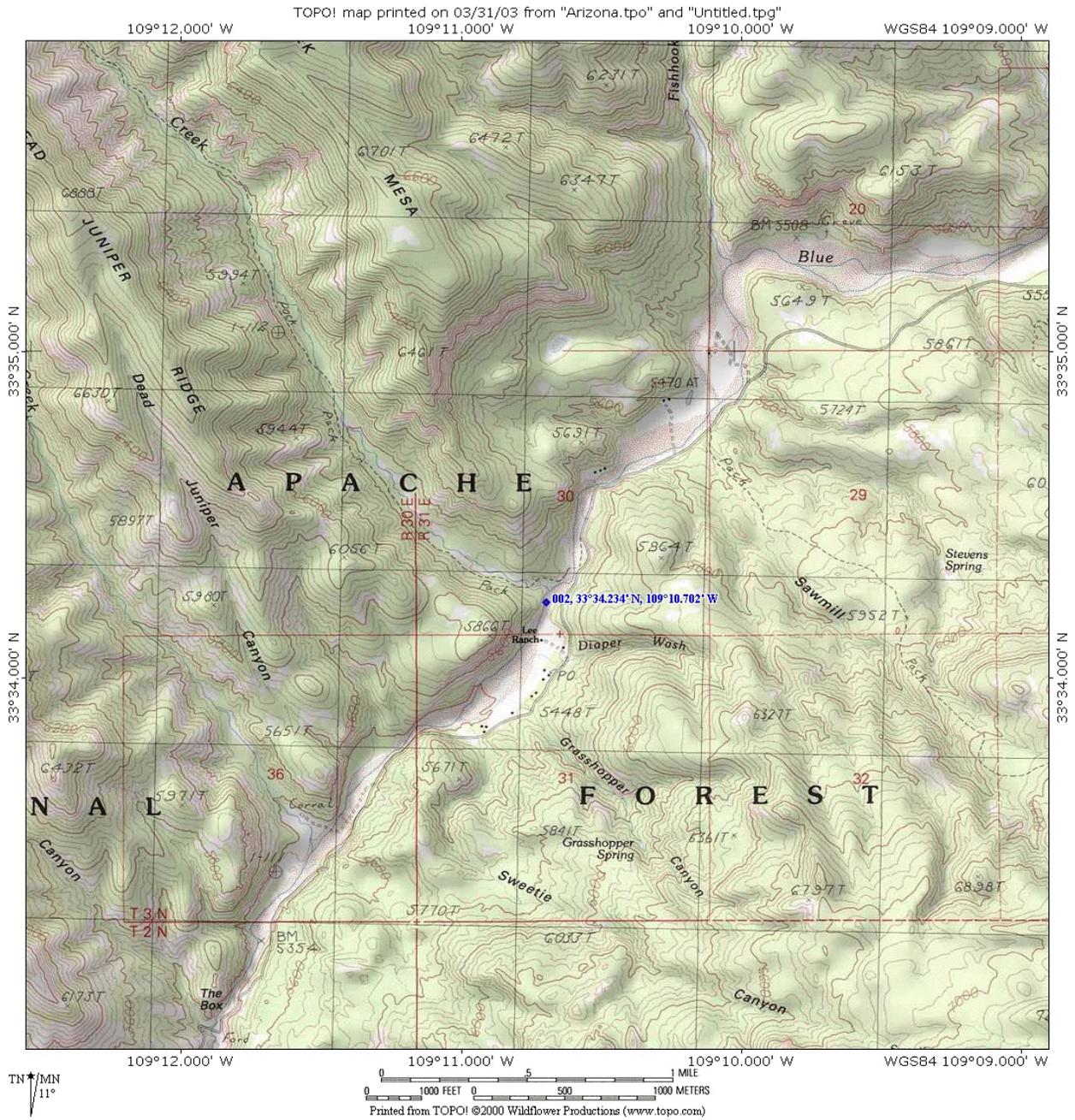
Bob Broscheid, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ

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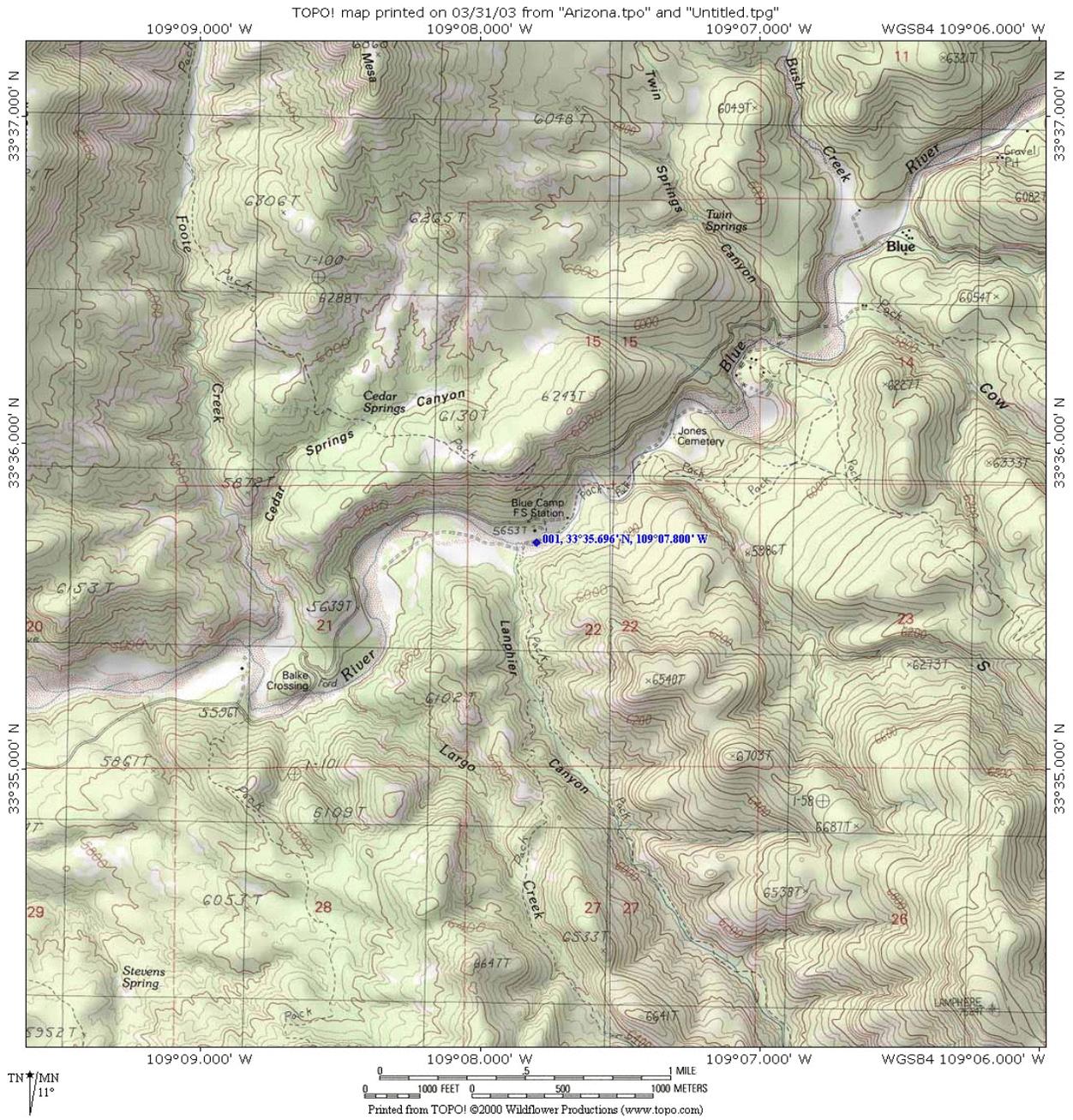
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Figure 1: Marks and Awtrey diversions



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Figure 2: Awtrey Diversion



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Figure 3: Marks Diversion