



# United States Department of the Interior



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In Reply Refer to:

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02EAAZ00-2014-F-0140-R001

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FWS/R2/ES-ARD/057714

November 10, 2015

## Memorandum

**To:** Manager, Las Cruces District, Bureau of Land Management, Las Cruces, New Mexico

**From:** Field Supervisor, Arizona Ecological Services Office, U.S. Fish and Wildlife Service, Phoenix, Arizona

**Subject:** Reinitiation of Consultation on the Proposed Southline Transmission Project to Reflect an Update to the Agency Preferred Alternative for the Final Environmental Impact Statement (Final EIS)

Thank you for your July 27, 2015, correspondence transmitting your *Request to Amend the Biological and Conference Opinion and Conference Report on the Proposed Southline Transmission Project with an Update to the Agency Preferred Alternative for the Final Environmental Impact Statement (Final EIS)*. The document was received by us on July 28, 2015. We are providing this response pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (ESA), and the ESA's implementing regulations at 50 CFR 402.

Our *Final Biological and Conference Opinion and Conference Report (Final BO)*, dated December 30, 2014 (File number 02EAAZ00-2014-F-0140), considered the preferred agency alternative that had appeared in your March 2014 *Proposed Southline Transmission Line Project Draft Environmental Impact Statement and Draft Resource Management Plan Amendment (Draft EIS)*. In response to letters of concern from the vintner industry, the Bureau of Land Management (BLM) and Western Area Power Administration (Western) decided to change the location of the segment of transmission line in the vicinity of Willcox Playa from the Segment P7a [located east and south of the Playa in order to minimize impacts to migratory birds, including sandhill cranes (*Grus canadensis*)], which was considered in the Draft EIS and Final BO, back to Segment P7 (adjacent to the southern and eastern edges of Willcox Playa), considered in our Draft BO transmitted to you on November 10, 2014.

Your July 27, 2015, memorandum requested an Amendment to our Final BO to consider the revised Segment P7 alignment. This request involves a change to the agency action (route change), which is one of the four reinitiation criteria; therefore, this memorandum will serve as a reinitiation of consultation for this project. BLM and Western have determined that the effect on the only listed species occurring in the area in which both segments are located (the endangered lesser-nosed bat; *Leptonycteris yerbabuenae*) is essentially the same: may affect, likely to adversely affect. Since the portion of the route that is changed is relatively short and there is only one listed species to consider, this reinitiation of formal consultation will be streamlined.

The December 30, 2014, Final BO's analyses and conclusions for the endangered Mexican long-nosed bat (*Leptonycteris nivalis*), the endangered Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*), the endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the threatened yellow-billed cuckoo (*Coccyzus americanus*), and threatened northern Mexican gartersnake (*Thamnophis eques megalops*) and critical habitats, as applicable, remain unchanged. This consultation also remains a concurrence with your prior determination that the proposed action was not likely to adversely affect the Gila chub (*Gila intermedia*) and its critical habitat and the endangered Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*) or its critical habitat. We therefore incorporate, via reference, the analyses appearing in the narrative and Appendix A of our December 30, 2014, Final BO.

This reinitiated biological opinion is based on the project proposal, literature, telephone conversations, field investigations, and other sources of information. Literature cited in this reinitiated biological opinion is not a complete bibliography of all literature available on the affected species, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

The subsequent narrative represents our streamlined consultation on the proposed action and includes only information that has changed subsequent to the transmittal of our December 30, 2014, Final BO.

## CONSULTATION HISTORY

*December 30, 2014:* We transmitted our Final BO on the effects of implementing what was, at that time, the agency-preferred alternative in the March 2014 *Proposed Southline Transmission Line Project Draft Environmental Impact Statement and Draft Resource Management Plan Amendment* (Draft EIS). The Consultation History of this prior consultation is incorporated herein via reference. Of specific relevance to this reinitiation, our December 30, 2014, Final BO evaluated the effects of the P7a route near the Wilcox Playa.

*July 28, 2015:* We received your July 27, 2015, memorandum requesting reinitiation of formal consultation in order to evaluate the effects of your decision to implement the P7 alignment. We note that our November 10, 2014, Draft BO had included, among analyses of the entire proposed action, our analysis of Segment P7.

*September 3, 2015:* We transmitted a memorandum to you stating that all information required of you to reinitiate formal consultation required by the regulations governing section 7(a)(2) interagency consultation at 50 CFR §402.14 had been provided in your July 27, 2015, memorandum. We also

provided the dates by which reinitiated consultation would be completed and provided notice that, pursuant to section 7(d) of the ESA, you shall not make any irreversible or irretrievable commitment of resources which have the effects of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate section 7(a)(2) and would avoid jeopardizing the continued existence of endangered or threatened species or destroying or adversely modifying their critical habitats.

*June 17, 2015 through October 20, 2015:* We provided and received relevant project information via electronic mail and during telephone conversations.

*October 21, 2015:* We transmitted the Draft BO for the proposed action to your staff via electronic mail.

*November 4, 2015:* We received an electronic mail message from your staff stating that there were no comments on the October 21, 2015, Draft BO and requesting we transmit a final version of the document.

## **BIOLOGICAL OPINION**

### **Description of the Proposed Action**

The proposed action has been changed to reflect the implementation of Segment P7 rather than Segment P7a. Both segments are in Route Group 2, although Segment 7a does not appear in BO Figure 1 on page 69 in our December 30, 2014, Final BO. The initial proposal of Segment P7 triggered concern on the part of the Arizona Game and Fish Department (AGFD) and FWS over effects to sandhill cranes wintering at the Wilcox Playa. This resulted in the selection of Segment P7a, which shifted the segment to the east, away from the playa. Subsequent public comments regarding prospective economic concerns resulted in an abandonment of the rerouted line and a return to the initial P7 alignment.

The remainder of the proposed action, including the proposed conservation measures for threatened and endangered species, remains as described in your February 2014 *Biological Assessment for the Southline Transmission Project*, your March 2014 Proposed Southline Transmission Line Project Draft Environmental Impact Statement and Draft Resource Management Plan Amendment, and our December 30, 2014, Final BO, and is incorporated herein via reference.

### **Status of the Species and Critical Habitat**

The status of the species for the lesser long-nosed bat has not changed since our December 30, 2014, Final BO. The prior narrative is incorporated herein via reference.

### **Environmental Baseline**

The Environmental Baseline for the lesser long-nosed bat has not changed since our December 30, 2014, Final BO. The prior narrative is incorporated herein via reference.

## **Effects of the Proposed Action**

Both Segments 7 and the alternate Segment 7a are in Route Group 2 (see BO Table 1 in the Final BO). Changes in this alignment are relevant only to the lesser long-nosed bat; the remaining species do not occur in either affected area. Given that all nectivorous bat-related conservation measures (see Appendix D in the Final BO) remain part of the proposed action, there will be no additional effects to this species. Critical habitat has not been designated for the lesser long-nosed bat; therefore, none will be affected.

## **Cumulative Effects**

There have been no changes to the Cumulative Effects described in our December 30, 2014, Final BO; the prior analyses are incorporated herein via reference.

## **Conclusion**

The lesser long-nosed bat's status and baseline information has not changed since we transmitted our December 30, 2014, Final BO. The effects of Segment 7 and Segment 7a are identical in terms of the species. The cumulative effects are also unchanged.

We therefore conclude that the implementation of Segment 7 rather than Segment 7a will not jeopardize the continued existence of the lesser long-nosed bat. Critical habitat has not been designated for this species; therefore, none will be affected.

## **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. "Take" is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. "Harm," is defined (50 CFR 17.3) and means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. "Harass" is defined (50 CFR 17.3) and means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. "Incidental take" is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

Sections 7(b)(4) and 7(o)(2) of the Act generally do not apply to listed plant species, including the Pima pineapple cactus. However, limited protection of listed plants from take is provided to the extent that the Act prohibits the removal and reduction to possession of federally listed endangered plants from areas under Federal jurisdiction, or for any act that would remove, cut, dig up, or damage or destroy any such

species on any other area in knowing violation of any regulation of any State or in the course of any violation of a State criminal trespass law.

### **Amount or Extent of Take**

We concluded in our December 30, 2014, Final BO, and have determined again, that incidental take of the lesser long-nosed bat is not reasonably certain to occur; therefore, no incidental take is authorized.

### **Conservation Recommendations**

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

We incorporate, via reference, the Conservation Recommendations for the lesser long-nosed bat that appeared in our December 30, 2014, Final BO. We are also adding the following recommendation for a non-listed, but rare, native plant:

- We request that pre-construction surveys be conducted for the Chihuahua scurfpea (*Pediomelum pentaphyllum*) in to-be-affected areas and that we be contacted prior to disturbance if any are located. Surveys are most effective following rains when the plants are most visible. We recommend that the vegetation and weed-related conservation measures appearing in Appendix D of the Final BO be implemented with consideration given for this species.

In order for the FWS to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the FWS requests notification of the implementation of any conservation recommendations.

### **REINITIATION AND CLOSING STATEMENT**

The conference portion of the December 30, 2014, Final BO for the Southline Transmission Project remains in effect. You may ask the FWS to confirm the conference opinion as a biological opinion issued through formal consultation if the proposed species is listed or critical habitat is designated. The request must be in writing. If the FWS reviews the proposed action and finds there have been no significant changes in the action as planned or in the information used during the conference, the FWS will confirm the conference opinion as the biological opinion for the project and no further section 7 consultation will be necessary.

After listing as threatened or endangered and any subsequent adoption of this conference opinion, the Federal agency shall request reinitiation of consultation if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may affect the species in a manner or to an extent not considered in the conference opinion; 3) the agency action is subsequently modified in

a manner that causes an effect to the species that was not considered in this opinion; or 4) a new species is listed or critical habitat designated that may be affected by the action.

Please note that there always exists the potential for critical habitat proposed rules to undergo revisions prior to being subject to a final rulemaking. Final critical habitat designations may also differ substantively from proposed critical habitat. Should either of these events occur for the respective proposed critical habitats for the yellow-billed cuckoo and/or northern Mexican gartersnake, we recommend that you review the applicable documents, analyze the effects the proposed action may have upon them, and contact FWS immediately.

This also concludes formal consultation on the actions outlined in your July 27, 2015, request. The remainder of the December 30, 2014, Final BO remains in effect. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

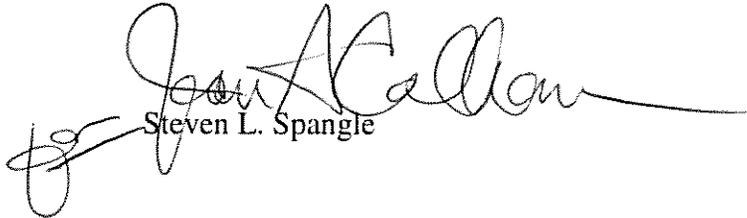
Certain project activities may also affect species protected under the Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. sec. 703-712) and/or bald and golden eagles (*Haliaeetus leucocephalus* and *Aquila chrysaetos*, respectively) protected under the Bald and Golden Eagle Protection Act (Eagle Act). The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when authorized by the FWS. We reiterate our concerns regarding Segment P7 and its potential impact on sandhill cranes [see memorandum of July 9, 2014 (File Number FWS/R2/ES-ARD/057714)].

The Eagle Act prohibits anyone, without a FWS permit, from taking (including disturbing) eagles, and including their parts, nests, or eggs. If you think migratory birds and/or eagles will be affected by this project, we recommend seeking our Technical Assistance to identify available conservation measures that you may be able to incorporate into your project.

For more information regarding the MBTA and Eagle Act, please visit the following websites. More information on the MBTA and available permits can be retrieved from <http://www.fws.gov/migratorybirds> and <http://www.fws.gov/migratorybirds/mbpermits.html>. For information on protections for bald eagles, please refer to the FWS's National Bald Eagle Management Guidelines (72 FR 31156) and regulatory definition of the term "disturb" (72 FR 31132) published in the Federal Register on June 5, 2007 (<http://www.fws.gov/southwest/es/arizona/BaldEagle.htm>), as well as the Conservation Assessment and Strategy for the Bald Eagle in Arizona (SWBEMC.org).

In keeping with our trust responsibilities to American Indian Tribes, we encourage you to continue to coordinate with the Bureau of Indian Affairs in the implementation of this consultation. We also encourage you to coordinate the review of this project with the Arizona Game and Fish Department, particularly with respect to minimizing impacts on sandhill cranes via the relocation of Crane Lake away from the Segment 7 alignment (as discussed during a September 15, 2015, project conference call between our respective agencies).

Please refer to consultation number 02EAAZ00-2014-F-0140-R001 in all future correspondence regarding this proposed action. Should you require further assistance or if you have any questions regarding the ESA issues, please contact Jason Douglas at (520) 670-6150 (x226) or Jean Calhoun at (x223). If you have any questions regarding migratory bird issues, please contact Greg Hughes, Chief, Migratory Birds, at (505) 248-6460.



Steven L. Spangle

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