

UNITED STATES FISH AND WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act, and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and determined that the action of designating critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) pursuant to section 4 of the Endangered Species Act of 1973, as amended:

Check One:

- is a Categorical Exclusion (CatEx) as provided by 516 DM 2, Appendix 1, and/or 516 DM 6, Appendix 1 (*reference which CatEx was used for this determination*). No further NEPA documentation will therefore be made.
- is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.
- is found to have significant effects and, therefore, further consideration of this action will require a Notice of Intent to be published in the Federal register announcing the decision to prepare an Environmental Impact Statement (EIS).
- is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.
- is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Signature Approval

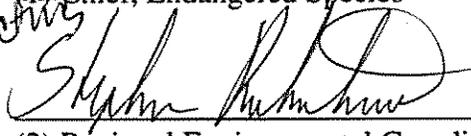


(1) Chief, Endangered Species

9/30/05

Date

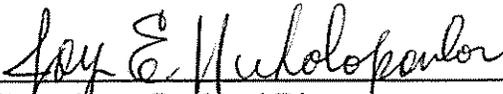
*acting*



(2) Regional Environmental Coordinator

9/30/05

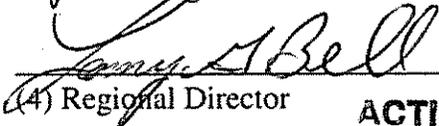
Date



(3) Assistant Regional Director -  
Ecological Services

9/30/05

Date



(4) Regional Director

**ACTING**

9/30/05

Date

## **Finding of No Significant Impact**

### **Final Designation of Critical Habitat for the Southwestern Willow Flycatcher**

The Service is designating critical habitat for the southwestern willow flycatcher (*Empidonax traillii extimus*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 48,896 hectares (ha) (120,824 acres (ac)) or 1,186 kilometers (km) (737 miles (mi)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Apache, Cochise, Gila, Graham, Greenlee, Maricopa, Mohave, Pinal, Pima, and Yavapai counties in Arizona; Kern, Santa Barbara, San Bernardino, and San Diego counties in southern California; Clark County in southeastern Nevada; Grant, Hidalgo, Mora, Rio Arriba, Socorro, Taos, and Valencia counties in New Mexico; and, Washington County in Southwestern Utah.

#### **General description of designated critical habitat**

Critical habitat for the southwestern willow flycatcher is being designated across a wide portion of the subspecies' range and is organized in management units (as described in the Southwestern Willow Flycatcher Recovery Plan). We are designating stream segments in 15 management units found in 5 recovery units as critical habitat for the southwestern willow flycatcher and excluding or exempting from this designation various river or stream segments previously proposed as critical habitat within many of those units. The stream segments designated occur in southern California, southern Nevada, southwestern Utah, Arizona, and New Mexico. Lands we are designating are under private, local agency, county, State, Tribal, and Federal ownership.

#### **Coastal California Recovery Unit**

The Coastal California Recovery Unit stretches along the coast of southern California from just north of Point Conception south to the Mexico border. This Recovery Unit contains designated segments within the Santa Ynez, Santa Ana, and San Diego management units. The stream segments designated as critical habitat are described below in their appropriate management units.

Santa Ynez Management Unit: We are designating a 32 km (20 mi) Santa Ynez River segment in Santa Barbara County, California. This is the only stream in the Santa Ynez Management Unit to have nesting southwestern willow flycatchers and is northernmost along coastal California. While a total of three sites are known along the length of the Santa Ynez River, our designated segment holds a single breeding site. A high of 28 territories were detected at this breeding site in 2000. In 2003, four territories were known at this site. Southwestern willow flycatchers have been detected nesting on the Santa Ynez River since 1994.

Santa Ana Management Unit: The Santa Ana River is the single largest river system in southern California with flycatchers distributed throughout the stream from its headwaters/tributaries in the San Bernardino Mountains in San Bernardino County, California,

downstream to Riverside County. We are designating two segments (an upper 40.8 km/25.3 mi segment and a 13.6 km/ 8.5 mi lower segment) of the Santa Ana River in San Bernardino County and other segments with high connectivity near its headwaters. In San Bernardino County we are designating 14.2 km (8.8 mi) of Bear Creek, 19.2 km (11.9 mi) of Mill Creek, 4.1 km (2.6 mi) of Waterman Creek, and 4.5 km (2.8 mi) of Oak Glen Creek.

San Diego Management Unit: We are designating a 9 km (5.6 mi) segment of the Santa Margarita River and a 1.6 km (1 mi) segment of De Luz Creek in San Diego County, California, upstream of Camp Pendleton. Territories have been detected on the Santa Margarita River at Camp Pendleton since 1994. A high of 22 territories in 2002 and 19 in 2003 were detected at the two known breeding sites on the Santa Margarita River on Camp Pendleton. The segment upstream from Camp Pendleton maintains a diversity of riparian vegetation used by dispersing and migrating southwestern willow flycatchers and the ability to develop breeding habitat for population growth or discovery of undetected territories.

We are designating six segments of the San Luis Rey River and the lowest 5 km (3.1 mi) portion of Pilgrim Creek in San Diego County, California. Five separate segments of the San Luis Rey River are located upstream (7.5 km/4.7 mi), adjacent to (0.75 km/0.5 mi, 1 km/0.6 mi), between (1.7 km/1 mi), and immediately (3 km/1.9 mi) below the La Jolla and Rincon and Indian Tribes. The lowest 51.3 km/32 mi segment of the San Luis Rey River is a contiguous segment extending to the ocean. A total of eight breeding sites (seven on San Luis Rey River and one on Pilgrim Creek) are spread along the length of these streams. Breeding sites have been detected since 1994.

We are designating a short 3.2 km (2 mi) portion of Agua Hedionada Creek in San Diego County, California. A single territory was detected from 1998 to 2000. No territories were detected from 2001 to 2003.

We are designating joining segments of Temescal Creek (7 km/4.4 mi) and Santa Ysabel River (6 km/3.7 mi) in San Diego County, California. Both segments are found upstream of known breeding sites that are being excluded due to their inclusion in the San Diego County Multi-Species Habitat Conservation Plan. As a result, these two segments currently provide habitat for dispersing and migrating flycatchers and locations for population growth and/or discovery of undetected territories.

We are designating a 5.1 km (3.2 mi) segment of Temecula Creek in San Diego County, California. Two breeding sites are known from Temecula Creek, with one occurring on the designated segment.

#### Basin and Mohave Recovery Unit

This unit is comprised of a broad geographic area including the arid interior lands of southern California and a small portion of extreme southwestern Nevada. The Recovery Unit contains the Owens, Kern, Mohave, Salton, and Amargosa management units. Stream segments designated in this proposal are found in the Kern, Mohave, and Salton management units.

Kern Management Unit: We are designating a 15.5 km (9.6 mi) segment of the South Fork of the Kern River in Kern County, California. This is the only stream segment in the Kern Management Unit known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting at two sites along this reach of the Kern River since 1993. In 1997, a high of 37 territories were detected at a single location. In 2003, 20 territories were reported from a single site.

Mohave Management Unit: We are designating a 16.1 km (10 mi) portion of the Mojave River, a 18.8 km (11.7 mi) section of Holcomb Creek, and a 20.3 km (12.6 mi) section of Deep Creek (including the uppermost portion of Mohave River Forks Reservoir) in San Bernardino County, California, near the Town of Victorville. Since 1995, southwestern willow flycatchers have been detected nesting at three sites along this reach of the Mojave River, one site on Holcomb Creek, and zero sites on Deep Creek. Deep Creek connects Holcomb Creek with the Mohave Forks Reservoir and provides riparian habitat for dispersal and migration, and areas for population growth. In 2002, a high of 13 territories were detected at all 5 sites within these segments; however in 2003, 10 territories were recorded.

Salton Management Unit: We are designating an 11 km (6.8 mi) portion of San Felipe Creek in San Bernardino County, California. This is the only stream in the Salton Management Unit known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting at a single site since 1998. In 1998 and 1999, a high of four territories were detected on this stream segment. In 2003, two territories were estimated from this site. This stream and the territories on it have high connectivity with other smaller populations in the adjacent San Luis Rey Management Unit in the Coastal California Recovery Unit raising the collective population above 10 territories.

#### Lower Colorado Recovery Unit

This is a geographically large and ecologically diverse recovery unit, encompassing the Colorado River and its major tributaries from the high elevation streams in the White Mountains of East/Central Arizona to the main stem Colorado River through the Grand Canyon and continuing downstream through the arid lands along the lower Colorado River to the Mexico border. This recovery unit contains the Little Colorado, Middle Colorado, Virgin, Pahranaagat, Bill Williams, Hoover to Parker, and Parker to Southerly International Border management units. Stream segments are being designated within the Little Colorado, Virgin, and Bill Williams management units.

Little Colorado Management Unit: We are designating a portion of the Little Colorado River and portions of the East and West Forks of the Little Colorado River in Apache County, Arizona. The 11.2 km (7 mi) segment of the East Fork of the Little Colorado River extends from Forest Service Road 113 downstream to its confluence with the West Fork of the Little Colorado River and Little Colorado River. The 8 km (5 mi) section of the West Fork of the Little Colorado goes from just upstream of Forest Service Road 113 downstream to its confluence with the East Fork Little Colorado River and Little Colorado River. The Little Colorado River

segment extends for 15.8 km (9.8 mi) downstream from the confluence of the East and West Forks to the diversion ditch near the Town of Greer.

Virgin Management Unit: We are designating a contiguous segment of the Virgin River in Utah, Arizona, and Nevada. The segment extends for 118.7 km (73.8 mi) from the Washington Field Diversion Impoundment in Washington County, Utah, downstream through the Town of Littlefield, Arizona, and ends in Nevada at the upstream boundary of the Overton State Wildlife Area in Clark County, Nevada. This segment exists for 36.7 km (22.8 mi) in Utah, approximately 52 km (32.3 mi) through Arizona, and 30 km (18.6 mi) in Nevada. The Virgin River is the only stream within this Management Unit and within Utah known to have nesting southwestern willow flycatchers. Southwestern willow flycatchers have been detected nesting in 1995 at three sites in the Nevada segment, a single site in the Arizona segment since 2001, and two sites in the Utah segment since 1995. In 2001, a high of 40 territories were detected at 5 of the 6 sites within the proposed designation (36 in Nevada, 1 in Arizona, and 3 in Utah). In 2003, 37 territories were detected at 4 of the 6 sites.

Bill Williams Management Unit: We are designating a 30.4 km (18.9 mi) segment of the Big Sandy River from the Town of Wikieup to Groom Peak Wash, in Mohave County, Arizona. This segment contains a known breeding site (15 territories in 2003 and 28 in 2004), habitat for dispersing, migrating, and non-breeding southwestern willow flycatchers, as well as areas for population growth.

#### Gila Recovery Unit

This unit includes the Gila River watershed, from its headwaters in southwestern New Mexico downstream to near the confluence with the Colorado River (USFWS 2002: 65). Stream segments designated in this proposal are found in the Verde, Roosevelt, Middle Gila/San Pedro, and Upper Gila management units.

Verde Management Unit: We are designating two separate segments of the upper Verde River in Yavapai County, Arizona. The first segment occurs in the Verde Valley and extends for 23.1 km (14.4 mi) from near the Town of Cottonwood (2 miles north of Highway 89A/260 intersection) downstream to the upstream end of Yavapai-Apache Tribal lands. The second segment extends for 29.2 km (18.1 mi) from the downstream boundary of Yavapai-Apache lands through the town of Camp Verde to Beasley Flat on the Prescott National Forest. A small (less than 1 km/0.6 mi) non-Tribal section of critical habitat separates two segments of excluded Yavapai-Apache Tribal lands.

Roosevelt Management Unit: We are designating a contiguous segment of lower Tonto Creek and the Salt River immediately upstream from the conservation space of Roosevelt Lake in Gila and Pinal Counties, Arizona. A 31.7 km (19.7 mi) segment of Tonto Creek begins at the confluence of Tonto Creek and Rye Creek and extends to the high water mark of Roosevelt Lake in Gila County, Arizona. The 28.3 km (17.6 mi) segment of the Salt River extends from the Cherry Creek confluence on the Tonto National Forest and travels downstream to the high water mark of Roosevelt Lake in Gila County, Arizona. Outside of the conservation space of

Roosevelt Lake, 10 territories were detected along Tonto Creek in 2004, and approximately 30 in 2005.

Middle Gila/San Pedro Management Unit: We are designating a segment of the middle and lower San Pedro River, and a segment of the Gila River near the San Pedro/Gila River confluence in Pinal, Pima, and Cochise Counties, Arizona. The middle/lower San Pedro River segment extends for 97.4 km (60.5 mi) to the Gila River. The Gila River segment begins at Dripping Springs Wash and extends for 72.4 km (45 mi) downstream past the San Pedro/Gila confluence and the Towns of Winkleman and Kelvin to the Ashehurst Hayden Diversion Dam near the Town of Cochran in Gila and Pinal Counties, Arizona. Flycatchers have been detected nesting along these segments since 1993. In 2003, a high of 167 territories from 19 sites (12 on San Pedro and 7 on the Gila) were detected on the stream segments proposed for critical habitat within this Management Unit. In 2004, a total of 157 territories were detected from these sites. Dripping Springs Wash had one to two territories detected in 2005. Degradation of habitat quality due to an apparent reduction in river flow has dropped the number of territories on the Gila River segment from 68 in 1999, 26 in 2003, to 14 in 2004. This location, along with populations at Roosevelt Lake, Arizona, and in the Cliff-Gila Valley, New Mexico, have the most southwestern willow flycatcher territories throughout its range.

Upper Gila Management Unit: We are designating four distinct southwestern willow flycatcher critical habitat segments along the Upper Gila River from the Turkey Creek/Gila River confluence on the Gila National Forest, New Mexico, downstream to San Carlos Apache Tribal Land, Arizona. There are three full segments we are designating as southwestern willow flycatcher critical habitat on the upper Gila River in southwestern New Mexico (Grant and Hidalgo Counties) and immediately across the Arizona State line into Greenlee County. We are also designating four small parcels of land that are interspersed within an excluded portion of the U-Bar Ranch in the Cliff/Gila Valley, New Mexico.

#### Rio Grande Recovery Unit

This Recovery Unit encompasses the Rio Grande watershed from its headwaters in southwestern Colorado downstream to the Pecos River confluence in southwestern Texas, although no flycatcher breeding sites are currently known along the Rio Grande in Texas. This Recovery Unit contains the San Luis Valley, Upper Rio Grande, Middle Rio Grande, and Lower Rio Grande management units. Only river segments in the Middle and Upper Rio Grande are being designated as critical habitat.

Upper Rio Grande Management Unit: We are designating single segments of the upper Rio Grande in Taos and Rio Arriba Counties, New Mexico; the Rio Grande del Rancho in Taos County, New Mexico; and Coyote Creek in Mora County, New Mexico. The upper Rio Grande segment extends for 45.9 km (28.5 mi) from the Taos Junction Bridge (State Route 520) downstream to the upstream boundary of the San Juan Pueblo. The 10.4 km (6.5 mi) of the Rio Grande del Rancho extends from Sarco Canyon downstream to the Arroyo Miranda confluence. The 9.3 km (5.8 mi) Coyote Creek segment travels from about 2 km/1 mi above Coyote Creek State Park downstream to the second bridge on State Route 518, upstream from Los Cocas.

**Middle Rio Grande Management Unit:** We are proposing three separate segments of the middle Rio Grande in Bernalillo, Valencia, and Socorro Counties, New Mexico. These segments are separated by the Sevilleta and Bosque del Apache National Wildlife Refuges (NWR) that are being excluded from this designation as explained below. The most northern Rio Grande segment extends from the southern boundary of the Isleta Pueblo for 71.1 km (44.2 mi) to the northern boundary of the Sevilleta NWR. The middle Rio Grande segment extends for 44 km (27.3 mi) from the southern boundary of the Sevilleta NWR to the northern boundary of the Bosque del Apache NWR. The most southern Rio Grande segment extends for 20.1 km (12.5 mi) from the southern boundary of the Bosque del Apache NWR to the overhead powerline near Milligan Gulch at the northern end of Elephant Butte State Park.

### **General description of areas excluded from designation of critical habitat**

Within the areas containing features essential to the conservation of the southwestern willow flycatcher across six states there are private lands with legally operative Habitat Conservation Plans (HCP) or draft HCPs, State lands with conservation plans, Tribal lands, NWRs, and other private lands with management plans or programs in place for the southwestern willow flycatcher.

We have considered, but are excluding from critical habitat for the southwestern willow flycatcher pursuant to section 4(b)(2) of the Act, lands containing essential features in the following areas. The following lands are covered by the completed HCPs: Western Riverside Multiple Species Habitat Conservation Plan, San Diego County Multiple Species Conservation Plan, City of Carlsbad Habitat Management Program, Lower Colorado River Multiple Species Conservation Plan, and Roosevelt Habitat Conservation Plan (only Roosevelt Lake). The following Tribes and Pueblos have completed and are implementing Southwestern Willow Flycatcher Management Plans: Hualapai, Chemehuevi, Colorado River, Fort Mojave, Quechan (Fort Yuma), Yavapai-Apache, San Carlos, Isleta Pueblo, La Jolla, and Rincon. The following Northern New Mexico Pueblos have established southwestern willow flycatcher management partnerships with the Service: San Ildefonso, Santa Clara, and San Juan. The following NWRs have completed Comprehensive Conservation Plans or have developed management programs and implementing management strategies specific to southwestern willow flycatcher habitat: Pahrnagat, Havasu, Cibola, Imperial, Bill Williams, Alamosa, Bosque del Apache, and Sevilleta. The following State and Federal wildlife areas have completed management plans/programs that are being implemented for the protection of southwestern willow flycatcher habitat: Overton and Key Pittman State Wildlife Areas, Nevada; Alamo State Wildlife Area, Arizona; and, South Fork Kern River Wildlife Area, California, Sprague Ranch, Kern River, California. Other lands excluded under section 4(b)(2) of the Act due to southwestern willow flycatcher/riparian habitat conservation plans/programs/easements and/or partnerships include: Los Angeles Department of Water and Power, Owens River, California; San Luis Valley Partnership, Rio Grande and Conejos Rivers, Colorado; Hafenfeld Ranch, Kern River, California; Salt River Project - Horseshoe Lake, Verde River, Arizona, the City of Albuquerque/Rio Grande Valley State Park, Rio Grande, New Mexico, and U-Bar Ranch, Gila River, New Mexico.

In addition, we identified in the proposed critical habitat rule for the southwestern willow flycatcher possible exclusion of Camp Pendleton and Fallbrook Naval Weapons Station from critical habitat under section 4(b)(2) of the Act. After re-evaluation, we have exempted lands owned by Camp Pendleton and Fallbrook Naval Weapons Station from the final critical habitat designation pursuant to section 4(a)(3) of the Act based on legally operative INRMPs that provide a benefit to the southwestern willow flycatcher.

## **Background**

On January 25, 1992, a coalition of conservation organizations petitioned the Service, requesting listing of the southwestern willow flycatcher as an endangered species, under the Act. On September 1, 1992, we published a finding that the petition presented substantial information indicating that listing may be warranted and requested public comments and biological data on the species (57 FR 39664). On July 23, 1993, we published a proposal to list southwestern willow flycatcher as endangered with critical habitat (58 FR 39495), and again requested public comments and biological data on the species. We published a final rule to list southwestern willow flycatcher as endangered on February 27, 1995 (60 FR 10694). We deferred the final designation of critical habitat for this endangered species until July 23, 1995, pursuant to 16 U.S.C. Sec. 1533 (b) (6) (C), citing issues identified in public comments, new information, and the lack of the economic information necessary to perform an economic analysis.

Following the final listing, we took no immediate action on the proposal to designate critical habitat due to a listing moratorium and a series of rescissions of listing funds imposed by Congress from April 1995 to April 1996. On March 20, 1997, the U.S. District Court of Arizona, in response to a suit by the (Southwest) Center for Biological Diversity, ordered us to designate critical habitat for the southwestern willow flycatcher within 120 days. On July 22, 1997, we published a final critical habitat designation for southwestern willow flycatcher along 964 river km (599 river mi) in Arizona, California, and New Mexico (62 FR 39129). We published a correction notice on August 20, 1997, on the lateral extent of critical habitat (62 FR 44228).

As a result of a suit from the New Mexico Cattlegrower's Association initiated in March 1998, on May 11, 2001, the 10<sup>th</sup> Circuit Court of Appeals vacated (i.e., set aside) critical habitat, citing a faulty economic analysis, and instructed us to issue a new critical habitat designation. On September 30, 2003, in a complaint brought by the Center for Biological Diversity, the U.S. District Court of New Mexico instructed us to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. On October 12, 2004, pursuant to this court order, we proposed to designate for the southwestern willow flycatcher 376,095 ac (152,124 ha) [including approximately 1,556 stream miles (2,508 stream kilometers)] of critical habitat, which includes various stream segments and their associated riparian areas, not exceeding the 100-year floodplain or flood prone area, on a combination of Federal, State, Tribal, and private lands in southern California, southern Nevada, southwestern Utah, south-central Colorado, Arizona, and New Mexico (69 FR 60706).

## **Environmental Assessment**

The service considered three: Alternative A – Essential Habitat; Alternative B – Exclusions; and the No Action Alternative. Alternative A would designate approximately 376,225 acres along selected stream segments as critical habitat within Arizona, California, Colorado, Nevada, New Mexico, and Utah. Alternative B is similar to Alternative A, except that approximately 30,445 acres would be excluded from consideration as critical habitat. Thus, Alternative B would designate approximately 345,780 acres as essential habitat. The No Action Alternative is required by the National Environmental Policy Act (NEPA) for comparison to the other alternatives analyzed in this EA. The Service selected Alternative B.

The Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Arizona, California, Colorado, Nevada, New Mexico, and Utah. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. In the final rule we categorized and responded to all applicable, substantive comments received during the public comment periods. All comments received were analyzed and, where appropriate, changes were incorporated into the final environmental assessment, economic analysis, and/or the final rule.

Section 4(b) of the Act states “The Secretary shall make determinations [of critical habitat] ... solely on the basis of the best scientific data available . . .” We considered the best scientific information available to us at this time, as required by the Act. This designation is based upon our most current understanding of the biology and requirements of the Southwestern willow flycatcher. Based upon newly available information, coordination with land managers and stakeholders, and input received during the public comment period, we have made revisions to the areas designated as critical habitat, which will be reflected in the final rule. We are not aware of any reliable information that is currently available to us that was not considered in this designation process. This final determination constitutes our best assessment of areas needed for the conservation of the species.

One of the purposes of an environmental assessment is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (40 CFR 1508.9). An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an environmental assessment that analyzes the effects of the designation. On April 28, 2005, we announced the availability in the Federal Register of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Southwestern willow flycatcher (70 FR 21988). We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the southwestern willow flycatcher does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of the National Environmental

Policy Act of 1969 (as amended). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27).

Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context of short- and long-term impacts of the proposed designation of southwestern willow flycatcher critical habitat includes the 21 management units within 5 recovery units, a 100-county area in 6 states and stream segments that encompass designated critical habitat. Impacts of critical habitat designation at these scales would be minor.

Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]). The intensity of potential impacts that may result from proposed designation of critical habitat for southwestern willow flycatcher is low.

Potential impacts to environmental resources, both beneficial and adverse, would be minor. Analyses of impacts of critical habitat designation on sensitive resources within stream segments proposed as flycatcher critical habitat were conducted and discussed in Chapter 3 of the environmental assessment, and it was determined that designation of critical habitat would have both adverse and/or beneficial impacts on those resources. These analyses concluded that the adverse impacts of critical habitat designation would not be significant.

There would be minor impacts to public health or safety from the designation of critical habitat and no impacts to unique characteristics of the geographic area. The increased risk of West Nile virus transmission and the increased risks of wildland fire were analyzed within the context of critical habitat designation. The increased risks of insect-vector-borne West Nile virus caused by critical habitat designation were determined to be minor in comparison to risks created by man-made conditions. Impacts of wildland fire on public health and safety were determined to be minor, as wildland fire suppression and wildland fire management within Wildland-Urban Interface areas would not be significantly impeded by the designation of critical habitat.

Potential impacts to the quality of the environment are not likely to be highly controversial and the impacts do not pose any uncertain, unique, or unknown risks. Impacts are not likely to be highly controversial because, as the analyses of impacts of critical habitat designation has concluded, the quality of the environment would not be significantly modified from current conditions. This analysis was based on past consultations, past impacts of flycatcher conservation on activities within the flycatcher recovery area, and the likely future impacts from flycatcher conservation. Past section 7 consultations within designated critical habitat would likely be re-initiated. New activities would result in section 7 consultations. A number of activities, including livestock grazing, wildland fire, exotic vegetation management, and recreation would likely have some flycatcher-conservation-related constraints or limitations imposed on them.

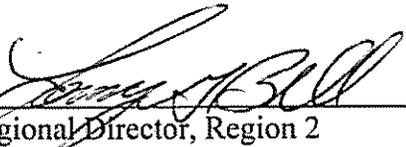
Impacts to water management and resource activities are not expected to be controversial because, as discussed in the analysis of impacts on water resources, the constraints on current water management activities are expected to be limited.

The designation of critical habitat by the Service for the conservation of endangered species is not a precedent-setting action with significant effects. The Service has designated critical habitat for numerous other species. Therefore, designating critical habitat for flycatchers is not a precedent-setting action. There would not be any significant cumulative impacts because, as described above in Section 3.3 of the environmental analysis, the cumulative impacts would be limited to section 7 consultation outcomes and subsequent effects on other species, the effects of designated critical habitat for other species, and the effects of land management plans. Critical habitat designation is not likely to affect sites, objects, or structures of historical, scientific, or cultural significance because any such potential impacts would be addressed by federal and state laws enacted to protect and preserve these resources.

The designation of critical habitat for flycatcher would have long-term beneficial effects for this endangered subspecies. The purpose of the Proposed Action is to re-designate critical habitat for the flycatcher, a subspecies listed as endangered under the Act. Critical habitat designation would have long-term beneficial conservation-related impacts on the flycatcher subspecies survival and recovery through maintenance of primary constituent elements.

Proposed critical habitat designation would not violate any federal, state, or local laws. The designation of critical habitat is required by law in order to comply with the Act and to comply with a U.S. District Court order. Designation of critical habitat for the southwestern willow flycatcher will not a significant effect on the human environment.

As such, an environmental impact statement is not required.

**ACTING**   
Regional Director, Region 2  
U.S. Fish and Wildlife Service

9/30/05  
Date