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March 8, 2004

Mr. Steve Spangle
Field Supervisor
Arizona Ecological Services Office
U.S. Fish and Wildlife Service
2321 West Royal Palm Road
Suite 103
Phoenix, Arizona 85021

RE: Notice of Scoping Meetings and Intent to Prepare an Environmental Assessment for the Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher, 69 Fed. Reg. 2940 (Jan. 21, 2004).

Dear Mr. Spangle:

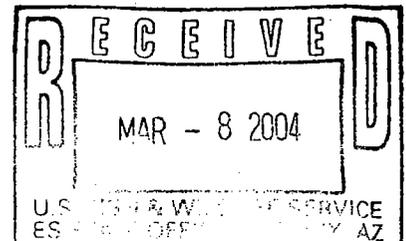
On behalf of Phelps Dodge Corporation ("PDC"), I would like to provide the following comments on the scoping notice relative to the proposed designation of critical habitat for the southwestern willow flycatcher ("SWWFL"). PDC is a member of the Arizona Mining Association ("AMA") and has reviewed the comments submitted by the AMA regarding the referenced notice of scoping. PDC supports the AMA comments and incorporates them herein by reference. In addition, we would like to highlight a couple of issues that are of particular importance to the company and request that the U.S. Fish and Wildlife Service ("FWS") give careful consideration to those issues.

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PDC has a long history of commitment to efforts in furtherance of protecting the SWWFL. Representatives of PDC actively participated in the development of the 2002 SWWFL Recovery Plan. The company has sponsored multiple years worth of surveys and research on its private property in New Mexico in cooperation with the Forest Service's Rocky Mountain Research Station. Various PDC subsidiaries have engaged, and will continue to engage, in voluntary practices to preserve occupied and suitable habitat.

PDC's commitment to the survival and enhancement of SWWFL populations does not, however, change the fact that we strongly believe that the proposed designation of critical habitat should be based on the best available science and limited to those areas that are *essential to the conservation and in need of special management protection* in accordance with the provisions of the Endangered Species Act ("ESA"). See 16 U.S.C. § 1532(5)(A) and 50 C.F.R. 424.12(b). In addition, PDC believes that a review of the oft-cited listing of threats to the species (i.e., livestock grazing, water diversion, cowbird nest-parasitism, etc.) should be undertaken in light of information and studies that have substantiated that the SWWFL can thrive in a variety of habitats previously thought to be detrimental.

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Examples of relevant studies that have occurred on PDC's privately held land in the Cliff-Gila Valley in Grant, County New Mexico are attached hereto. The attached studies are particularly relevant because respected scientists (i.e., the Rocky Mountain Research Station) conducted the studies on the largest known population of SWWFL in the southwestern United States. The studies document that SWWFL can thrive alongside active farming and ranching operations and that livestock grazing, where properly managed, is not a threat to the species. Scientific, non-biased, studies such as these must be given serious consideration by the FWS. In the 2002 Recovery Plan, the studies were unfortunately distinguished as "an anomaly" in light of highly functional habitat conditions. PDC encourages FWS to give the studies the appropriate level of respect and consideration in this critical habitat designation process. The studies clearly establish that the SWWFL can thrive in a multiple use environment. CH15

Finally, PDC encourages FWS to undertake the preparation of an environmental impact statement ("EIS") in lieu of an environmental assessment ("EA"). On its face, the proposal to designate critical habitat meets that criteria for a determination of "significant" as that term is defined by the National Environmental Policy Act's ("NEPA") Counsel of Environmental Quality ("CEQ") regulations. See 42, U.S.C. § 4332(2)(c); 40 C.F.R. § 1502.3 (i.e., the proposal has controversial effects which are highly uncertain and the designation will establish a precedent for future actions such as the imposition of mitigation measures in the context of consultations under the ESA). It is a certainty, that the designation of critical habitat will affect existing and future land uses, natural resource availability, and have profound economic effect on a local and regional basis. As such, the FWS must complete an EIS to properly evaluate these impacts. See *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996). PR32

PDC appreciates the opportunity to comment on the proposed designation of critical habitat and looks forward to continued participation in this important NEPA process.

Sincerely,

C. Strickler H.
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Enclosures (listing attached)

List of Enclosures

- 1) Summary Report for the 2003 Field Season (Cliff-Gila Valley, MN) – “Results of Surveys and Nest Monitoring”
- 2) Published Article from Avian Biology - Studies in Avian Biology No. 26:91-95, 2003 – “Microhabitat Use by Breeding Southwestern Willow Flycatchers on the Gila River, New Mexico)
- 3) Final Report to T&E, Inc. March 2002 – “A Quantitative Analysis of the Diet of Southwestern Willow Flycatchers in the Gila Valley, New Mexico”
- 4) Summary Report for the 2002 Field Season (Cliff-Gila Valley, NM) – “Results of Nest Monitoring and Climatic Influences on Breeding”
- 5) Final Report for the 2000 Field Season (Cliff-Gila Valley, NM) - “Landscape-Level Effects on Density, Reproduction, etc.”
- 6) Final Report for the 1999 Field Season (Cliff-Gila Valley, NM) - "Reproductive Success and Habitat Requirements . . ."
- 7) Summary Report for the 1998 Field Season (Cliff-Gila Valley, NM) - "Reproductive Success of Southwestern Willow Flycatchers"
- 8) Summary Report for the 1997 Field Season (Cliff-Gila Valley, NM) - "Reproductive Success of the Southwestern Willow Flycatchers"

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