

RECORD OF DECISION

Lower Colorado River Authority's Transmission Services Corporation Habitat Conservation Plan Issuance of an Incidental Take Permit for 22 Listed Species and 1 Unlisted Species in 241 Counties in Texas

Introduction

The U.S. Department of the Interior, U.S. Fish and Wildlife Service (Service) is responsible for issuing incidental take permits as authorized under §10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 USC §1531-1544, ESA). This document records the Service's decision to issue an incidental take permit (ITP or permit) to the Lower Colorado River Authority's Transmission Services Corporation (LCRA TSC; Applicant) for implementation of the *Lower Colorado River Authority's Transmission Services Corporation Habitat Conservation Plan in Texas* (HCP), dated June 2019.

The Applicant chose to develop an HCP in coordination with the Service and other interested parties to address incidental take of 22 threatened and endangered species and 1 unlisted species (Covered Species) from the Applicant's construction, operation, upgrade, decommissioning, repair, and maintenance of existing and future electrical transmission lines, substations, access roads, and related facilities within 241 Texas counties (Plan Area). The Applicant proposed the HCP based on their evaluation of potential ESA section 9 liability. The HCP, including the minimization and mitigation measures, allows the Applicant to conduct their Covered Activities, meet its project goals, and comply with the ESA. The Applicant has determined that this programmatic HCP is preferable to individual ESA section 10 applications and ESA section 9 liability coverage for each project in the Plan Area because this programmatic HCP will save the Applicant time and money on each project by allowing the consultation and liability coverage to be frontloaded and streamlined. The requested ITP will authorize incidental take of the Covered Species over a period of 30 years.

We prepared this Record of Decision (ROD) in compliance with the Service's decision-making requirements under the National Environmental Policy Act of 1969 (40 CFR 1505.2; NEPA) to document our decision regarding the selection of the preferred alternative as evaluated in our final Environmental Impact Statement (EIS). This ROD describes (1) the proposed action and the Service's decision; (2) alternatives considered in the EIS, including the preferred alternative; (3) the rationale for our decision; (4) public comments received on the draft EIS and public involvement in this decision making process; and (5) the conclusion. We will not finalize this ROD or issue an ITP until at least 30 days after publication in the *Federal Register* of the Notice of Availability (NOA) for the final EIS.

The Proposed Action and the Service's Decision

We intend to issue an ITP to authorize incidental take of 22 listed and 1 unlisted species during the Applicant's implementation of the preferred alternative (Alternative A) based on a thorough review of the alternatives and their environmental consequences as described in the final EIS.

Implementing this decision entails issuance of the ITP, including all terms and conditions governing the permit. It also requires, pursuant to 16 U.S.C. 1539(a)(2), adherence to all of the avoidance, minimization, and mitigation measures specified in the HCP to offset impacts to the Covered Species to the maximum extent practicable, including the described monitoring and adaptive management measures. The HCP meets all issuance criteria for an ITP. Since implementing the HCP will result in impacts that rise to the level of incidental take, we prepared a Biological and Conference Opinion (Opinion) prior to making a permit decision in accordance with section 7(a)(2) of the ESA. Our Opinion documents our determination that issuance of the ITP will not jeopardize the continued existence of federally listed species, and will not destroy or adversely modify designated critical habitat.

Alternatives Considered

Three alternatives, including the No Action Alternative, and their environmental consequences were evaluated in the draft EIS. We published an NOA of the application and availability of the HCP and draft EIS in the *Federal Register* on April 29, 2019 (84 FR 18075). The NOA also requested public comments and initiated a 45-day public comment period. The following is a brief summary of the alternatives considered. A more detailed description is included in the final EIS.

Alternative A - Proposed Federal Action: Authorization of incidental take of 22 listed and 1 unlisted species, as described in LCRA TSC HCP Chapter 5, are evaluated in terms of the direct and indirect effects from Covered Activities on Covered Species habitat. The Permit Area for ITP implementation includes 241 Texas counties (see Figure 1 of the HCP). Activities covered by the HCP include: construction, operation, upgrade, decommissioning, repair and maintenance of electrical transmission lines, substations, access roads, and related infrastructure and facilities, including both surface and subsurface disturbances (Covered Activities). LCRA TSC activities are classified as: 1) new construction; 2) upgrading and decommissioning; 3) operations and maintenance; and 4) emergency responses. The Applicant requested a term of 30 years from the date of ITP issuance. The Applicant will fully implement minimization and mitigation measures to offset impacts to the Covered Species according to the HCP.

Alternative B – Reduced Permit Duration: Under Alternative B, the Service would issue an ITP for a term of 15 years from the date of issuance to LCRA TSC to authorize incidental take of the same Covered Species that could result from the same Covered Activities. This alternative would implement all minimization and mitigation measures identified for the Proposed Federal Action, but for a shorter permit duration. A reduced permit duration would also reduce the total amount of incidental take authorized for most species, while still providing a streamlined permit process to LCRA TSC during the ITP duration. Projects extending beyond the 15-year permit that would cause incidental take of federally listed species would require additional permitting, if coverage is not available to LCRA TSC under other avenues, such as a separate HCP.

Alternative C – No Action: Under the no action alternative, the Service would not issue the requested ITP and LCRA TSC would not implement the Conservation Program described in the HCP. Nevertheless, LCRA TSC is still required to comply with relevant local, state, and Federal laws, including the ESA. Therefore, with respect to complying with the ESA, LCRA TSC would

seek an individual ITP, or where a Federal nexus existed, incidental take authorization pursuant to section 7 of the ESA, on a project-by-project basis for activities likely to result in incidental take of federally listed species.

Rationale for Decision

Based on a thorough review of the alternatives and their environmental consequences, we selected the preferred alternative (Alternative A) for implementation. We did not choose the No Action Alternative because it would be fiscally burdensome and inefficient for both LCRA TSC and the Service. Any delays in project construction could jeopardize LCRA TSC's ability to provide efficient, safe, and reliable service to its customers, resulting in additional costs to consumers and a potential for human safety concerns. The project-by-project compliance approach could also result in isolated, independent areas of mitigation that would not be as productive or beneficial for the Covered Species. Moreover, reviewing each of LCRA TSC's projects over the 30-year life of the requested ITP would result in a tremendous burden on the Service's resources. We did not select Alternative B because it did not meet the Applicant's need in full.

We determined that the preferred alternative best balances the protection and management of habitat for the Covered Species, while allowing the Applicant to supply the public's energy needs. This alternative, consistent with the Applicant's proposed HCP, provides a streamlined opportunity for the Applicant to comply with the ESA relative to 22 listed and 1 unlisted species across a range of activities and areas. Considerations used in this decision, as described in the HCP, include: 1) avoidance, minimization, and mitigation measures that will reduce the impacts on Covered Species; 2) conservation measures that will protect and enhance habitat; 3) mitigation measures for the Covered Species that will fully offset anticipated impacts and provide recovery opportunities; and 4) consistency with existing recovery plans or recovery outlines, noting that some Covered Species have neither.

The Applicant has committed to implement a variety of conservation measures intended to minimize and mitigate the impacts of incidental taking that will result from the Covered Activities. Below is a brief description of the measures; a detailed description of the measures is in Chapter 6 and Appendix D of the HCP.

A. Minimization measures:

1. Provide annual training to staff and contractors working on Covered Activities regarding the implementation of the HCP;
2. clear or manage vegetation using aboveground means when practicable;
3. mark those sections of transmission lines that cross major rivers when Covered Activities involve New Construction or Significant Upgrades;
4. limit herbicide applications to woody vegetation that is a potential threat to the reliability of LCRA TSC Facilities and observe the Service's Southwest Region guidance for pesticide applications;
5. to the extent practicable, considering reasonable landowner preferences, use seed mixes composed solely of seeds of native plant species;
6. restore preconstruction contours and revegetate construction sites and any other places

- where soil is disturbed;
7. to the maximum extent practicable, avoid causing subsurface disturbances to wetlands, riparian areas, and aquatic habitats;
 8. use erosion and sedimentation controls as required by the Texas Commission on Environmental Quality or local ordinances to address storm water discharges during construction;
 9. request from the Service information on previously documented locations of the Covered Species, and make such requests in advance of enrolling LCRA TSC Activities in the HCP;
 10. coordinate an annual meeting between the Permittee and the Service to discuss upcoming Covered Activities;
 11. avoid making subsurface disturbances within 50 feet of: 1) the entrance or footprint (if known) of a karst feature known or assumed to be occupied by one or more of the karst invertebrates, or 2) a spring outlet or associated spring run or lake or, where applicable, a well with known or assumed occupancy by one or more of the aquatic Covered Species;
 12. request a meeting with the Service each year to discuss upcoming LCRA TSC Activities, updated distribution or occurrence information for Covered Species, opportunities for Advance Mitigation, and other concerns.

B. Mitigation measures:

1. Mitigation ratios (described in detail in Chapter 6.6.8 and enumerated in Appendix D of the LCRA TSC HCP for each Covered Species) will be applied at varying levels depending on the type of habitat modification (i.e., Direct or Indirect Habitat Modification), applicable Enrollment Scenario (i.e., impact assessments based on Suitable Habitat with Assumed Occupancy, Occupied Habitat with Demonstrated Occupancy, or Special Cases), and applicable Mitigation Factors (i.e., Existing Impacts, Relaxed Restrictions, or Post-Enrollment Mitigation).
2. Permittee will provide mitigation in accordance with Chapter 6.5 of the LCRA TSC HCP through one or more of the following means:
 - a. a Service-approved conservation bank with priority given to banks that have the Covered Activities within their service area,
 - b. Service-approved in-lieu fee programs,
 - c. third-party conservation providers implementing Service-approved conservation actions, or
 - d. Permittee-implemented conservation actions approved by the Service.
3. In the unlikely event that no practicable opportunities exist for carrying out mitigation obligations in connection with a Covered Activity, the Permittee will work with the Service to identify other types of practicable mitigation solutions for the Covered Species which may include, but are not limited to:

- a. Approval of alternate means of mitigation delivery, such as translocating or repatriating Covered Species, enhancement of functional habitat for Covered Species, or restoration of degraded habitat for Covered Species.
 - b. Approval of methods to reduce or eliminate other threats to the Covered Species.
 - c. Funding for research or studies regarding the Covered Species that further scientific understanding of how to manage and conserve those species.
4. To the extent practicable, LCRA TSC will avoid performing Covered Activities in areas that are of particular importance to a Covered Species, for example, in designated critical habitat, certain protected conservation areas, or important breeding sites. LCRA TSC identifies the Special Cases that are applicable to each Covered Species in Appendix D of the LCRA TSC HCP. From time to time, LCRA TSC may need or be required to perform Covered Activities in such areas. LCRA TSC will provide a greater level of mitigation for Direct and Indirect Habitat Modification that occur in areas that represent a Special Case, which is described in detail in Chapter 6.6.7 of the LCRA TSC HCP. The following language replaces item 2(e) in Chapter 6.6.7 of the LCRA TSC HCP to read: The conservation easement or other instrument demonstrating the status of the subject property was in place and disclosed by the Service to LCRA TSC Permittee no later than 30 days after the date LCRA TSC Permittee makes a request for such information to the Service, which will be anytime LCRA TSC Permittee initiates a routing study, regardless of whether the project is new or is a previously paused or cancelled project.
 5. The Service will review and approve all mitigation as described in Chapter 6.5.1 of the LCRA TSC HCP, except approval shall not be required where Covered Activities occur within the Service Area of a conservation bank for the impacted Covered Species and credits are purchased from that conservation bank.
 6. If a Covered Activity will take more than one Covered Species within the same location, then:
 - a. the mitigation can also count towards those species, if they are all present within the same location on the mitigation lands (i.e. stacked); and
 - b. a stacked mitigation credit can only be used once regardless if all of the species within the mitigation were impacted by the Covered Activity.

With annual operating revenues of more than \$400 million, LCRA TSC is financially capable of ensuring proper implementation of this HCP, including planning, management, and completion of the Conservation Program described in the HCP. LCRA TSC estimates the approximate range of costs for generating a Conservation Credit for each Relevant Covered Species. LCRA TSC bases its Conservation Credit cost estimates on the average per-acre market value of rural land across the real estate markets that coincide with the Plan Area-range of a Covered Species (see Appendix H and Table 18 in the HCP). LCRA TSC has control of many of these variables and can include these variables as part of implementing the HCP.

Monitoring, as required by section 10(a)(2)(B) will consist of three basic elements:

- Compliance monitoring will consist of LCRA TSC submitting an annual report to the Service, documenting compliance with the HCP to ensure that they are meeting the terms of the ITP.
- Monitoring of post-disturbance restoration areas will include periodic site visits and documentation of site conditions, with the results documented in the annual report that LCRA TSC submits to the Service.
- Monitoring and adaptive management of mitigation will be done by LCRA TSC for properties they purchase, or will be the responsibility of the land owners or bankers consistent with a Service-approved agreement and monitoring plan for the site.

Public Comments on the Draft EIS

We published a NOA of the application and availability of the HCP and a draft EIS in the *Federal Register* on April 29, 2019 (84 FR 18075). The public comment period closed on June 13, 2019. We received nine comments, one from the Texas Historical Commission with only minor editing suggestions, one from the Environmental Protection Agency with no comment, four from tribes (three expressing no comments or concerns and one requesting to be a consulting party), one from the Texas Parks and Wildlife Department, and two comments that were not substantive. The final EIS provides the comments, responses, and how we they were addressed in Appendix B.

For More Information

The HCP and final EIS are available at <https://www.fws.gov/southwest/es/Austin/> and <http://www.regulations.gov> (search for Docket No. FWS-R2-ES-2019-16). Hard copies are available for review in the Service’s Albuquerque, New Mexico Regional Office, the Service’s Austin, Texas Field Office, or the DOI Natural Resources library in Washington D.C. For additional information, call Pete Fasbender, Assistant Regional Director, Ecological Services at 505/248-6671.

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 Date