



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Division of Ecological Services  
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In Reply Refer To:  
FWS/R2/OKES/  
2008-F-0208

July 11, 2013

John Hartley  
Federal Highway Administration  
5801 N. Broadway Extension, Suite 300  
Oklahoma City, Oklahoma 73118

Dear Mr. Hartley,

On July 16, 2008, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion (PBO) regarding highway construction activities undertaken by the Federal Highway Administration (FHWA) and Oklahoma Department of Transportation (ODOT) in eastern Oklahoma and their effect to the American burying beetle (ABB). Under the existing PBO, FHWA was allowed incidental take of 5,999 acres of suitable ABB habitat and agreed to set aside \$1,350,000 to aid in the conservation of the ABB. While the PBO was intended to cover all highway construction activities for a period of five years, FHWA has yet to reach the level of take issued under the PBO. ODOT's latest report (May 2013) indicates that FHWA still has 3,522 acres of take available as well as \$129,300 in monies for the conservation of the ABB.

FWHA and ODOT have been consulting with the Service regarding a new PBO, however, the Service is moving away from the use of the American Burying Beetle (ABB) Conservation Fund to the use of Conservation Banks for the ABB and are re-evaluating the effectiveness of our current conservation approach. While the existing PBO was intended to be in effect for five years, it does not list this time-frame as a reason for re-initiation. Until the new PBO is completed, the Service is extending the current PBO allowing it to remain in effect until one of the following re-initiation triggers is reached: (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 the 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 the opinion; (4) a new species is listed or critical habitat designated that may be affected by the action. All FHWA/ODOT avoidance and minimization measures, as well as reasonable and prudent measures described in the existing PBO, will remain in effect until completion of a new PBO. The anticipated completion for the new PBO is December 2013.

Mr. Hartley

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If you have any questions, please call Chris Tanner at 918-382-4501 or Kevin Stubbs at 918-382-4516.

Sincerely,

  
*for* Jontie Aldrich  
Acting Field Supervisor

cc: Dawn Sullivan, ODOT  
Julianne Hoagland, ODOT