

**United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021
Telephone: (602) 242-0210 FAX: (602) 242-2513**

AESO/SE
02-21-00-F-286R

December 31, 2002

Mr. John C. Bedell
Forest Supervisor
Apache-Sitgreaves National Forests
P.O. Box 640
Springerville, Arizona 85938-0640

Dear Mr. Bedell:

Thank you for your November 5, 2002, request to convert the following four conference opinions for the recently listed Chiricahua leopard frog (*Rana chiricahuensis*) (67 FR 40790, June 13, 2002) to biological opinions.

Conference Name	Allotments	Consultation #	
On-going grazing on Tenney and South Escudilla Allotments (6 allotments)	Black River, Nutrioso Summer, Williams Valley, Boneyard, South Escudilla, and Tenney Allotments	2-21-00-F-286R	
Black River Watershed Opinion	P.S. Allotment	2-21-01-F-305	
Leopard frog conference on 8 Alpine allotments	Alpine, Beaver Creek, Colter Creek, Coyote-Whitmer, Fish Creek, Hannagan, Sprucedale-Reno, and Grandfather	2-21-95-F-445R 2-21-95-441R 2-21-01-F-301 2-21-95-F-447R	2-21-95-F-442R 2-21-01-F-304 2-21-95-444R
Pleasant Valley Opinion	Pleasant Valley	2-21-01-F-189	

As discussed with Terry Myers of your staff, each conference will be addressed individually to avoid confusion between consultations. Only the July 12, 2001, conference opinion (2-21-01-F-286R) is addressed in this letter. That opinion concerns the possible effects of livestock grazing allotment management plans for the Black River, Nutrioso Summer, Williams Valley, Boneyard, South Escudilla, and Tenney allotments on the then-proposed threatened Chiricahua leopard frog. As requested in your initial February 12, 2001, letter, the conference was conducted following the procedures for formal consultation. Following §402.10(d) of the Federal regulations

implementing the Endangered Species Act of 1973, as amended: If no significant new information is developed regarding the effects of the proposed project on the species, and no significant changes are made to the proposed project, the Fish and Wildlife Service may, upon written request by the action agency, adopt the opinion issued at the conclusion of the conference as the biological opinion for formal consultation when the species is listed. Accordingly, we have determined that it is appropriate to adopt the biological opinion rendered in the conference as the biological opinion for formal consultation based on the information in your November 5, 2002, letter and telephone conversations with Terry Myers. However, by this letter we modify the incidental take statement as explained below.

Due to recent court cases regarding biological opinions, we conclude that the incidental take statement for the above-mentioned opinion needs to be modified to be in accordance with the court's view of biological opinion standards. Therefore, the following language replaces numbers 1-4 on page 35 of the conference opinion.

1. *Any time livestock access any portion of the riparian/stream corridor of Coyote Creek, Boneyard Creek in the Boneyard or Black River allotments or*
2. *Any time livestock trespass on the Three Forks Pasture.*

In addition, Term and Condition 1.1 on page 36 of the conference opinion is replaced as follows:

- 1.1 *The Forest Service shall monitor incidental take as it occurs; note the time requirements in the Disposition of Dead and Injured Listed Species section of this BO. The Forest Service shall continue to submit an annual report to us that, at a minimum, briefly summarizes for the previous calendar year: (1) The implementation of terms and conditions and conservation recommendations, and (2) documentation of take or monitoring for listed species; if Chiricahua leopard frogs are found on the Forest in areas outside of those currently known, the Forest Service shall notify us (by telephone, electronic transmission, facsimile, or letter) within 10 calendar days of your knowledge of these site(s) and propose a site plan to minimize take at the new location. The report shall also make recommendations for modifying or refining these terms and conditions to enhance protection of the Chiricahua leopard frog or reduce needless hardship on you or your permittee(s).*

Please note the reinitiation clause remains the same. Reinitiation of formal consultation is required if the amount or extent of incidental take is exceeded, if new information reveals effects of the action that may impact listed species or critical habitat in a manner or to an extent not considered in this opinion, if the action is subsequently modified in a manner or to an extent that causes an effect to the listed species or critical habitat that was not considered in this opinion, or if a new species is listed or critical habitat designated that may be affected by this action.

As stated in our July 18, 2002, letter to you, we believe that other sections of this opinion may not be consistent with 9th Circuit Court conclusions. We still believe that the best remedy to this

Mr. John C. Bedell

3

would be reinitiation of this consultation to address these concerns. If the Forest has any questions or concerns about the reinitiation process or would like further information please do not hesitate to contact us.

We appreciate your cooperation and patience in this process. If we can be of further assistance, please contact Jennifer Graves (x232) or Debra Bills (x239) at the Arizona Ecological Services Field Office. Please refer to number 2-21-00-F-286R in future correspondence concerning this consultation.

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
District Ranger, Alpine Ranger District, Alpine, AZ
John Kennedy, Habitat Branch, Arizona Game & Fish Department, Phoenix, AZ

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