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AESO/SE
2-21-02-F-147

September 5, 2002

Memorandum

To: Elaine Zielinski, State Director, Bureau of Land Management, Phoenix, Arizona

From: Acting Field Supervisor

Subject: Transfer of Ownership for Federal Land in Apache County to the State of Arizona

This conference opinion responds to your July 16, 2002, request for formal section 7 conferencing under the Endangered Species Act (Act; 16 U.S.C. 1531 et seq.), as amended. The conference concerns possible effects of the Arizona state (Arizona) selection of public lands in Apache County, Arizona, for indemnity and Arizona state selection of public lands in Apache County, Arizona, for compensation from condemnation for acquisition and military withdrawal of state lands in the East Range of Fort Huachuca, Cochise County, Arizona on the proposed threatened mountain plover (*Charadrius montanus*). The U.S. Bureau of Land Management Arizona State Office (Bureau) has determined that the disposal of land to Arizona will not jeopardize the continued existence of the mountain plover. However, the Bureau has also requested that conferencing be conducted in accordance with the procedures for formal consultation, as provided in 50 CFR §402.10 (d), and has determined that the above action is likely to adversely affect the proposed threatened mountain plover.

This conference opinion is based on information provided as attachments to the Bureau's July 16, 2002, request for formal conference which included a Biological Assessment and Determination of Effects; various biological references used in determining said effects; several maps documenting the location of parcels planned for disposal; and numerous photographs referencing habitat conditions, etc. provided in electronic format (compact disk); telephone conversations and/or electronic mail transmissions with Ted Cordery of the Bureau's Arizona State Office; and other sources of information. A complete administrative record of this consultation is on file at this office.

Conference History

On July 17, 2002, the Bureau's July 16, 2002, memorandum requesting formal conference for potential effects of the proposed action to the mountain plover was hand-delivered to this office by Ted Cordery, Threatened and Endangered Species Coordinator, with the Bureau. The Bureau's conference initiation package contained the information required to begin formal conference.

In addition to the Bureau's request for formal conference on mountain plover, the Bureau determined that the proposed action would have "no effect" on the following species:

Species	Basis for Determination
Navajo sedge (<i>Carex specuicola</i>) Threatened	Species absent from project area; no critical habitat in project area.
Zuni fleabane (<i>Erigeron rhizomatus</i>) Threatened	Species/suitable habitat absent from project area.
Black-footed ferret (<i>Mustela nigripes</i>) Endangered	Species last observed in Apache County in 1917; preferred habitat criteria absent from project area.
Brown pelican (<i>Pelicanus occidentalis californicus</i>) Endangered	The only habitat that could possibly support a vagrant pelican is Lyman Lake, however very unlikely (never recorded to date). East shore is part of project area but management of this area will remain the same.
California condor (<i>Gymnogyps californianus</i>) Endangered - Section 10(j)	No habitat exists in the project area nearest confirmed sightings are 21.5 miles to the northwest.
Mexican spotted owl (<i>Strix occidentalis lucida</i>) Threatened	Species/suitable habitat absent from project area.
Bald eagle (<i>Haliaeetus leucocephalus</i>) Threatened	The only habitat that could support a wintering bald eagle is Lyman Lake. East shore is part of project area but management of this area will remain the same.
Southwestern willow flycatcher (<i>Empidonax trailii extimus</i>) Endangered	Species/suitable habitat absent from project area.
Chiricahua leopard frog (<i>Rana chiricahuensis</i>) Threatened	Species/suitable habitat absent from project area.
Apache trout (<i>Oncorhynchus apache</i>) Threatened	Species/suitable habitat absent from project area.
Loach minnow (<i>Tiaroga cobitis</i>) Threatened	Species/suitable habitat absent from project area.
Spikedace (<i>Meda fulgida</i>) Threatened	Species/suitable habitat absent from project area.
Three Forks springs nail (<i>Pyrgulopsis trivialis</i>) Candidate	Species/suitable habitat absent from project area.

Yellow-billed cuckoo (<i>Coccyzus americanus</i>) Candidate	Species/suitable habitat absent from project area.
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We responded to the Bureau's request for formal conference with a memorandum dated August 2, 2002, confirming initiation of formal conferencing and concurring with the "may affect, not likely to adversely affect" determination for the Little Colorado spinedace (*Lepidomeda vittata*) and the Mexican grey wolf (*Canis lupus baileyi*). Further discussion of concurrences is provided in Appendix A.

On September 3, 2002, a draft conference opinion was facsimiled to Ted Cordery (and subsequently mailed to the Bureau's State Director) while he was attending a meeting at our New Mexico Ecological Services Field Office in Albuquerque, New Mexico. The following day, September 4, 2002, Mr. Cordery phoned with his comments to the draft conference opinion and requested finalization of the opinion as soon as possible.

DESCRIPTION OF THE PROPOSED ACTION

The proposed action can be described as two correlated activities involving the transfer, or disposal, of land presently owned by the Bureau. One part of the proposed action is the granting of the Arizona's application for acquisition of 28,352.97 acres of Bureau lands in Apache County, Arizona for Indemnity Lieu. The other aspect of the proposed action involves the condemnation for acquisition and military withdrawal of Arizona lands in the East Range of Fort Huachuca, Cochise County, Arizona and compensation for the condemned lands with 6151.11 acres of Bureau lands in Apache County. The Bureau refers to both of these actions collectively as the In-Lieu Selection and Fort Huachuca Land Exchange and all lands involved are located in Apache County.

The proposed action involves a total of 34,504.08 acres of Bureau land being disposed to Arizona. The parcels range in size from 40 acres to slightly more than 674 acres. These dissociated parcels selected for disposal are geographically located within Arizona and are dispersed within the region generally located north-northeast of Springerville, east-southeast of St. John, and east to the border of New Mexico (see Appendix B). For the purposes of this conference opinion and due to the fact that the "action" is merely the transfer of land ownership (disposal), the action area will be confined to the specific parcels (34,504 acres in Apache County) targeted for disposal by the Bureau. The majority of land in the region of the proposed action is currently owned by Arizona, followed by Federal and private ownership by percentage, respectively. Once acquired by Arizona, the selected lands would likely be managed as status quo in the immediate future by the Arizona State Land Department (ASLD) with the primary uses remaining livestock grazing and dispersed recreation related to hunting.

Although not associated with the proposed action and therefore not considered in the "Effects of the Action" which follows later in this opinion, there remains the possibility that regional land use could change. The general area delineated in Appendix B lies over an underground carbon dioxide gas field. The ASLD may, in approximately 30 years, offer the opportunity for private carbon dioxide development. Such an effort would entail approximately 200 carbon dioxide wells on a 640 acre spacing along what is referred to geologically as the St. John's anticline. An

anticline is subsurface geologic condition where strata are folded in a convex upward orientation, or possessed this orientation at some stage of its development. The anticline is oriented in a northwesterly-southeasterly direction within the western portion of the area delineated in Appendix B and is considered the most cost-effective well placement strategy for the extraction of carbon dioxide. Estimates of total volumetric yield in the gas field have been as high as in the trillions of cubic feet with a estimated production time of approximately 40 years. Each of the estimated 200 wells anticipated for construction would occupy approximately 1 acre during construction and 0.02 acres post-construction. The development of the gas field would also entail the construction of ancillary infrastructure which may include a 40 acre processing plant, access roads, and a pipeline network. Conveyance pipeline is anticipated to be installed in proximate co-location with approximately 280 miles of main and spur access roads, many of which already exist. The gas would subsequently be piped through this network in an incrementally consolidated manner to large-scale facilities in west Texas or eastern New Mexico or perhaps southern California across federally-owned lands establishing a Federal nexus for section 7 coordination.

STATUS OF THE SPECIES

The mountain plover was proposed for listing as a threatened species on February 16, 1999 (64 F.R. 7587). The mountain plover is a small bird, about the size of a killdeer (*Charadrius vociferus*) in the plover family (Family *Charadriidae*). The type specimen was collected in 1837 by J. K. Townsend near the Sweetwater River, Fremont County, Wyoming (Coues 1874, cited in Laun 1957). There are no recognized subspecies (Oberholser 1974).

Description

The mountain plover is a compact bird (about 7-9 inches long) with light brown above and paler underparts, lacking the contrasting dark breastbelt typical of many other plover species. In flight, its underwings are white. Breeding plumage differs only by the addition of a dark line between the bill and eyes contrasting with a pale forehead. The bill is black, the legs are gray to light brown-yellow, feet are dark brown, and claws are black. The sexes look alike.

Life History/Habitat Use

The mountain plover is a migratory species of the shortgrass prairie and shrub-steppe eco-regions of the arid West. The universal characteristics of mountain plover habitat on both the breeding and wintering grounds are short vegetation, bare ground, and flat topography. They are found associated with plains, alkali flats, agricultural lands, cultivated lands, sod farms, prairie dog towns, and low shrubs at both breeding and wintering locales. Unlike other plovers, they are rarely associated with water.

Mountain plovers are heavily associated with disturbed areas in both breeding and wintering ranges. Historically, these disturbances were created in the presence of large nomadic grazing ungulate herds which included species such as bison (*Bison bison*), elk (*Cervus elaphus*), pronghorn (*Antilocapra americana*) as well as small mammals including kangaroo rats (*Didodomys* sp.), prairie dogs (*Cynomys* sp.) and badgers (*Taxidea taxus*) (Knopf 1996a). Specifically, the grazing, wallowing and/or burrowing activities of these species created the mosaic of bare ground and vegetated areas preferred by mountain plovers (Dobkin 1994, Knopf

1996a). Mountain plovers are also attracted to human-altered landscapes created by land uses including, but not limited to, livestock grazing (e.g. near stock watering tanks) and agriculture (e.g. fallow and cultivated fields) which have created a similar mosaic as described above (Knopf 1996b).

Mountain plovers forage opportunistically on ground-dwelling invertebrates and winged invertebrates that have perched on the ground (Knopf 1996b). Mountain plovers are insectivorous with beetles, grasshoppers, crickets, and ants as their principal food items (Stoner 1941, Baldwin 1971, Rosenberg *et al.* 1991, Knopf 1998).

The nest of the mountain plover is a simple scrape on the ground which is excavated by the male and may be lined with debris. Nests are usually placed in areas where vegetation is less than 4 inches in height, the amount of bare ground in the area exceeds 30%, and near a conspicuous object such as a manure pile or rocky area. Nesting area characteristics vary with geographic regions. In shortgrass prairie habitat, vegetation associated with nest sites includes *Bouteloua gracilis* (blue grama), *Buchloe dactyloides* (buffalo grass) and *Opuntia* spp. (prickly pear cactus). In shrub-steppe grasslands, vegetation around nests includes low-growing shrubs such as *Artemisia nova* (black sage) and *Atriplex gardneri* (Gardner saltbush) (Day 1994, Knopf 1996b). In areas where prickly pear cactus exist, nest sites are chosen in areas where cactus density is lower than that of surrounding areas (Knopf and Miller 1994). Topography is typically flat or gently rolling. Nesting areas consistently have slopes less than 12% (Knowles *et al.* 1982, Parrish 1988, Beauvais and Smith 1999). As an alternative to native habitat, mountain plovers will also nest on spring fallow or recently planted fields (Shackford 1991, Knopf and Rupert in press).

The breeding season begins soon after birds arrive from late March to late April, depending on latitude. Breeding season displays involve different calls and behavioral displays, including the “falling leaf” display, a soil scraping display, “Bowling” display, “Upright Copulatory” display and pursuit flights to attract mates, advertize territory occupancy and define boundaries between territories (Knopf 1996b). Territories in Colorado are about 40 acres, and adjacent territories may overlap significantly along boundaries. Breeding plovers show close site fidelity, often returning to the same territory in subsequent years. Territories tend to be aggregated with several breeding pairs occurring within a few square miles surrounded by empty but apparently suitable habitat (Knopf 1996b). Currently, little is known about mountain plover breeding territories in Arizona.

Nests may be initiated 1-2 weeks after arrival on the breeding grounds and the clutch of 3 eggs may take 3-12 days to complete. Incubation lasts approximately 29 days. In Colorado, egg-laying began April 15, continuing through mid-June, with one late nest observed June 23. Adults were found to incubate or attend nests with increasing frequency and duration as the incubation period continued. Nest attendance in Wyoming increased from approximately 50% of daylight hours early in incubation to approximately 100% within days of hatching (Laun 1957). Eggs appear highly resistant to chilling but susceptible to overheating in the sun due to their dark coloration (Knopf 1996b). No information is available on incubation behavior for breeding pairs of mountain plovers in Arizona.

Chicks leave the nest soon after the last egg hatches. Chicks are usually attended by one adult, brooded about one-third of the time for the first day. Daily movements of the broods may be extensive, with broods ranging over as much as 200 acres between hatch and fledging. Chicks fledge approximately 33 days post-hatch (Graul 1975). Immature mountain plovers leave breeding areas with adults and generally remain with the flock until returning the breeding area (Knopf 1996b).

Known predators of adult mountain plovers are few. Kit fox (*Vulpes macrotis*) and prairie falcon (*Falco mexicanus*) are the only documented predators of adults. However, their ground nests are vulnerable to mammalian predators including the thirteen-lined ground squirrel (*Spermophilus tridecemlineatus*), swift fox, badger (*Taxidea taxus*), and coyote (*Canis latrans*), and possibly corvids (crows (*Corvus brachyrhynchos*), ravens (*Corvus corax*) and magpies (*Pica pica*)). Ground squirrels, coyotes, Swainson's hawks (*Buteo swainsonii*), prairie falcons, and loggerhead shrikes (*Lanius ludovicianus*) have been observed taking flightless young (Knopf 1996b).

Species in the shorebird family are generally long-lived, with low annual reproductive rates and small clutch sizes. Available information on the mountain plover conforms to this pattern. Annual survival estimates for this species are unavailable, though over-winter survival is high, estimated at 0.9474 from a sample of 44 birds (Knopf 1996b). Few data exist on the life span of the mountain plover. Limited banded-bird recovery data offers varied results ranging from 6 months to slightly over 6 years.

Mountain plovers probably start breeding in their second year of life. Normal clutch size is three, very rarely four. Two-egg clutches probably result from predation of individual eggs. Birds are largely monogamous, though the pair bond is only maintained for a short period during breeding. There is some evidence that at least some females lay two clutches, one brooded by the male and the other by the female, with this strategy common in some years (Knopf 1996b).

Nest success has been estimated to vary from 26-65% between years and may be influenced by rainfall. Mountain plovers in Weld County, Colorado, fledged an estimated 0.26 and 1.4 young per nest in different studies between 1969 and 1974, though the higher estimate is believed to be biased by the exclusion of nests which totally failed (Knopf 1996b).

Distribution and Abundance

Mountain plovers occupy suitable breeding habitat in many of the Great Plains states from Canada south to Texas from late March through July. The continental breeding range has been significantly reduced from its historical extent, most notably in the eastern portion of its range (Knopf 1996b). Flocks may form as early as mid-June prior to migration to wintering habitats in August through October. Wintering areas are concentrated in the Central Valley of California, Texas and Mexico but wintering birds also reside in Arizona, Nevada, New Mexico, and coastal islands of California (San Clemente, Santa Rosa, and Farallon) in addition (Strecker 1912, Swarth 1914, Alcorn 1946, Jurek 1973, Garrett and Dunn 1981, Jorgensen and Ferguson 1984, Bruce Deuel, American Birds Editor, in litt. 1992, D. Shroufe, in litt. 1999). There are no wintering areas in Wyoming, Montana, Colorado, or New Mexico. In Arizona, wintering mountain plovers have been documented in Cochise, Maricopa, Pima, Pinal, and Yuma counties (D. Shroufe, in litt. 1999).

Historically, the mountain plover was considered numerous on breeding grounds in western and central Kansas and Oklahoma, western Nebraska and South Dakota, and eastern Colorado, Montana, and Wyoming. Approximately 1500, 7200, 2800, and 150 breeding birds are estimated to occur in Wyoming, Colorado, Montana, and New Mexico, respectively (Knopf *in litt.* 1991, Knowles and Knowles 1996, Sager 1996, H. Kingrey, *in litt.* 1997, Kingrey 1998). Small numbers of breeding mountain plovers have also been documented in Utah (6-29 birds counted from 1992-2001), Kansas (52-114 birds counted from 1992-1995), Texas (6 birds counted in 1992), Arizona (4 birds counted in 2002), Nebraska (up to 10 birds counted in 1992 and 1995), southeastern Alberta, Canada (3 birds counted in 1989-1990), and in Mexico (2 birds counted in 1999) (F. Knopf *in litt.* 1990, Shackford and Leslie 1995, K. Brian, Davis Mountain State Park, pers. comm. 1992, F. Knopf *in litt.* 1999, Knopf and Rupert 1999a, S. Dinsmore, pers. comm. 2000, L. Hanebury, pers. comm. 2000, Susan Jewell, Service, *in litt.* 2000, Ted Cordery, Bureau, pers. comm. 2002). Specifically in Arizona, mountain plovers have been observed during the breeding season in Apache, LaPaz, Maricopa, and Navajo counties.

Status and Threats

The mountain plover was designated a category 2 candidate species on December 30, 1982 (47 F.R. 58458), meaning that the species may be declining but more information was needed. We elevated its status to category 1 candidate in the 1994 Animal Candidate Notice of Review (59 F.R. 58982), meaning that listing was warranted, but precluded by higher priority species. In 1996, we did away with candidate categories 2 and 3, redefining candidate species to include only former category 1 candidate species (61 F.R. 64481). The mountain plover was retained as a candidate species in the 1997 status review (62 F.R. 49298). The species was petitioned for listing as threatened on July 7, 1997. Due to its candidate status, no 90-day finding was required in response to this petition. On February 16, 1999, we gave notice of a proposal to list the mountain plover as a threatened species pursuant to the Act (64 F.R. 7587). A final listing decision on this species is pending.

Endemic grassland birds have declined more rapidly than other bird species, and the mountain plover's decline is greater than the other grassland endemics (Knopf 1994, Sauer *et al.* 1997). Breeding Bird Survey data indicate a decline rate of approximately 3.7% annually from 1966 to 1993 which translates to approximately two-thirds reduction in total population during a 25 year period (Knopf 1996b).

Identified or suspected reasons for the decline include conversion of shortgrass and shrub steppe habitats, changes in range management to emphasize uniform grass cover, declines in native ungulates and burrowing animals, oil and gas development (and associated road construction), shooting and trapping, pesticides and other contaminants/toxics, and possibly population sinks created by certain agricultural practices. A population "sink" (Pulliam 1988) is an area within the breeding range of a species or population where reproduction is not adequate to balance mortality, but population levels are maintained by immigration of breeders produced in a nearby "source" area.

The anthropogenic alteration of north American grasslands have undoubtedly had the most prominent effect on native grassland communities. The historic and on-going removal of grassland herbivores (i.e. bison, prairie dogs, and antelope) has altered the grassland

characteristics and subsequently the biota of the ecosystem leading to unprecedented declines of endemic species (Knopf 1994, Knopf 1996b). The conversion of grasslands to agricultural uses have also adversely affected grassland species such as the mountain plover. Specifically, agricultural practices such as the turning of native sod, planting of winter wheat, sowing taller grass species (which inhibits visibility of mountain plovers, subsequently increases predation rates), and seasonally untimely planting and/or harvesting (Knopf 1996b). Many fields remain fallow until early May when plovers have already commenced nesting. These nests and eggs are subsequently destroyed when farmers begin planting (Knopf 1996b). Plovers then re-nest in the recently planted fields only to abandon the nests once the crop grows taller which diminishes visibility of predators (Knopf 1996b).

The mountain plover is currently protected by the Migratory Bird Treaty Act. Therefore, take of this migratory bird is prohibited, the issuance of this conference opinion notwithstanding.

ENVIRONMENTAL BASELINE

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat to provide a platform to assess the effects of the action now under consultation.

Vegetative/Habitat Description

The proposed action area is situated within a region containing Great Basin Conifer Woodland and Plains and Great Basin Grassland biotic communities. The vegetation types and associated habitats vary over the project area. Given the disjunct nature of the parcels included in the action area, one or more vegetation/habitat components may exist solely or in combination with other components. Examples of vegetation and habitat types present within the collective action area generally possess a juniper component and may include pinyon-juniper assemblages, juniper savannah with dense and/or sparse juniper stands, and open grasslands with tall and/or short grass and varying amounts of bare ground (if any) (Bureau 2002). Other habitat characteristics which may be present include former and current prairie dog communities ranging in size from 20 to 140 acres and anthropogenic modifiers including range improvements such as drinkers and miscellaneous shelters for livestock (Bureau 2002). Some variation in topography exists within the project area which includes rolling hills, mesas, escarpments, and cliffs; each possessing varying vegetative communities (Bureau 2002). Tables 1 and 2 in Appendix C were created by the Bureau for consideration in this conference and show the parcels, habitat type, and special status species considerations for In-Lieu Selections and Ft. Huachuca Exchange, respectively.

Anthropogenic Factors

Anthropogenic impacts to the project area are consistent with dispersed recreational uses (e.g. hunting, etc.) and livestock grazing. A series of paved and unpaved roads exist throughout the project area but usage is considered slight (Ted Cordery, Bureau, pers. comm. 2002). As noted

above, range improvements exist within the project area may include miscellaneous structures and water facilities for livestock uses.

Status of the Species within the Action Area

Breeding has been documented in Apache County, Arizona, but it is rare with four records on the Heritage Data Management System (compiled by the Arizona Game and Fish Department); one within the vicinity of the project area (not within a selected parcel), and three just outside the project area in the prairies to the west of Springerville (Bureau 2002). Monson and Phillips (1981) noted records of several flocks northeast of Springerville, in the vicinity project area from 1914 with one 1978 record of a nesting pair 10 miles east of the New Mexico-Arizona border, east of Springerville (Bureau 2002). As of 1999, no mountain plover observations have been made in adjacent Catron County, New Mexico (Bureau 1999).

Using both a variety of data sources (AGFD Natural Heritage Data, USGS Biological Resources Division data and maps, Bureau data including biological evaluation documents from adjacent New Mexico, published and gray literature) and on-site visits or observations from Bureau personnel on virtually all selected parcels, the Bureau made determinations of whether the selected parcels may harbor or be suitable for mountain plovers (Bureau 2002). The assessment for summer-resident mountain plovers included habitat modeling (Knopf and Miller 1994, Service 1999, Dechant *et al.* 2001) and visual observations of each selected parcel, based on known and recent localities of nesting birds just west and north of Springerville (Bureau 2002).

Based on revisits of historical plover localities and rediscovering mountain birds at two of these localities, the Bureau was able to further define suitable habitat for mountain plovers in Apache County. Such habitat is defined as flat (<5% slope), wide open prairie with trees not a visible part of the aspect (Bureau 2002). In addition, a combination of most or all of the following should be present: short grass, a great degree of bare ground (>30%), no tall weeds or shrubs, dirt tanks, water troughs or wells (not leaking) with associated roads and bare ground, prairie dog mounds, cattle feces, few rocks 12 inches in diameter or less, and short, small patches of *Opuntia* cacti (Bureau 2002). Just outside of the project area, shortgrass prairie grassland occurs extensively west of the Little Colorado River between Springerville and St. Johns, generally outside the project area, with the exception of one parcel, IL-18 located in the extreme eastern portion of the project area, close the New Mexico border (see Appendix B). Some selected parcels (IL-14 and IL-15) examined east of the Little Colorado River also possessed an extensive enough shortgrass prairie aspect to be suitable for mountain plovers (Bureau 2002). Due to the current drought conditions, livestock water was scarce in IL-14 and IL-15, minimizing livestock grazing pressure while subsequently allowing grasses to grow tall and cover to increase at least in the last growing season which significantly lessens the desirability of the habitat for mountain plovers. Therefore, much of the otherwise suitable habitat in those two units may be currently unsuitable. A large majority of IL-18, however, is currently suitable although two visits to IL-18 by Bureau personnel yielded no mountain plover observations (Bureau 2002). No breeding mountain plovers were ever observed within the strict boundary of any of the selected parcels within the project area.

Most of the selected parcels examined by the Bureau did not have the characteristics that would make suitable habitat for mountain plovers because they were either too rugged or hilly, or too heavily influenced by juniper (Bureau 2002). According to the Bureau, parcels IL-14, 15, and 18 have habitat that not only meets their Apache County suitable habitat criteria, but also meets the criteria for surveying according to our Mountain Plover Survey Protocol (Service 1999). However, due to time limitations, the Bureau was unable to perform surveys according to the protocol. A unique aspect of mountain plover habitat is that areas which are currently lacking in desirable habitat characteristics may quickly become desirable depending on the circumstance. For example, suitable habitat may become unsuitable on a short-term basis (rest from grazing), or can become quickly suitable on a short-term basis due to fire or intense livestock grazing (Bureau 2002).

EFFECTS OF THE PROPOSED ACTION

“Effects of the action” refers to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action (50 CFR §402.02). “Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration” (50 CFR §402.02).

The primary effect of the proposed action would be the transfer of the ownership and management of public lands from the United States to Arizona. Although this transfer of land management authority does not have a specific, direct effect on the mountain plover, protections under the Act will be diminished with the exception of section 9 prohibitions and section 7(a)(2) consultation provisions if a project dealing with those lands had a Federal nexus (e.g. the anticipated development of the carbon dioxide gas field residing under the project area).

Cumulative Effects

Cumulative effects are those impacts of future non-Federal (State, local government, and private) actions that are reasonably certain to occur in the action area. Future Federal actions will be subject to the consultation and conferencing requirements established in section 7 of the Act and, therefore, are not considered cumulative to the proposed project.

Non-Federal activities associated with the carbon dioxide well development may occur, but can not be anticipated at this time. All other land uses (recreation, grazing, etc.) are expected to remain the same in the immediate future.

CONCLUSION

After reviewing the current status of the mountain plover, the environmental baseline for the project area, the anticipated effect of the proposed action, and the apparent lack of cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the mountain plover. Our conclusion is based on the following reasons:

- 1) The proposed action would affect a relatively minor and rarely used portion of the species' breeding range;
- 2) Land management would not be significantly altered as a result of the proposed action; and
- 3) Mountain plovers, although recently observed within the vicinity of the project area, have not been documented in any of the parcels selected for disposal to Arizona and future occupancy is uncertain within the project area under consideration in this opinion.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits the take of listed species without special exemption. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, collecting, or attempting to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR §17.3). "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns that include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). "Incidental take" is any take of a listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or the applicant. Under the terms of sections 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act provided that such taking is in compliance with this incidental take statement.

The prohibitions against taking in section 9 of the Act do not apply to proposed species, such as mountain plover. However, because of the lack of documented species presence, we do not anticipate any incidental take of mountain plover from the proposed action. Instead, we advise the Bureau to consider implementing conservation recommendations that address protection of this species as specified later in this document.

DISPOSITION OF DEAD, INJURED, OR SICK MOUNTAIN PLOVERS

If the species is listed, and if a dead, injured, or sick mountain plover is found within the project area, initial notification must be made to our Law Enforcement Division, Federal Building, Room 108, 26 North McDonald, Mesa, Arizona, 85201 (Telephone: (480) 835-8289) within three working days of its finding. Written notification must be made within five calendar days and include the date, time, and location of the finding, a photograph of the animal, and any other pertinent information. The notification shall be sent to the Division of Law Enforcement with a copy to the Arizona Ecological Services Office. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible state. If possible, the remains of intact mountain plovers shall be placed with educational or research institutions holding appropriate State and Federal

permits. If such institutions are not available, the information noted above shall be obtained and the carcass left in place.

Arrangements regarding proper disposition of potential museum specimens shall be made with the institution prior to implementation of the action. Injured animals should be transported to a qualified veterinarian by an authorized biologist. Should any treated mountain plovers survive, we should be contacted regarding the final disposition of the animals.

Conservation Recommendations

Sections 2(c) and 7(a)(1) of the Act direct Federal agencies to use their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of listed species. Conservation recommendations are suggestions regarding discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, or regarding the development of information. The recommendations provided here do not necessarily represent complete fulfillment of the agency's section 2(c) or 7(a)(1) responsibilities for the mountain plover, should it be listed. We recommend that the Bureau implement the following actions:

1. Continue to conduct informal or formal surveys in Bureau-managed regions where mountain plovers may exist to obtain information on habitat use and distribution of mountain plovers in Arizona, as applicable and Bureau resources allow.
2. Continue to consider the habitat requirements and susceptibility (to incidental take in the breeding season) of the mountain plover in administering its livestock grazing leases and other Bureau-managed land uses to enhance mountain plover habitat, when applicable.

We request notification of the implementation of any conservation recommendations so we can be kept informed of actions that either minimize or avoid adverse effects, or that benefit proposed species or their habitats.

CLOSING STATEMENT

This concludes the conference for the possible effects of the Arizona selection of public lands in Apache County, Arizona, for indemnity and Arizona state selection of public lands in Apache County, Arizona, for compensation from condemnation for acquisition and military withdrawal of state lands in the East Range of Fort Huachuca, Cochise County, Arizona on the proposed threatened mountain plover. You may ask that we confirm the conference opinion as a biological opinion through formal consultation if the mountain plover is listed. The request must be in writing. If we review the proposed action and find that there have been no significant changes in the action as planned, or in the information used during the conference, we will confirm the conference opinion as a biological opinion and no further section 7 consultation will be necessary.

After listing of the mountain plover as threatened and any subsequent adoption of this conference opinion, the Bureau shall request reinitiation of consultation if:

- 1) incidental take is expected;
- 2) new information reveals any effects of the proposed action that may adversely affect listed species or critical habitat in a manner or to an extent not considered in this opinion;
- 3) the proposed action is subsequently modified in a manner that causes an effect to a listed species or critical habitat that was not considered in this opinion; or 4) a new species is listed or critical habitat designated that may be affected by this proposed action (50 CFR §402.16).

Thank you for your continued coordination. Any questions or comments should be directed to Jeff Servoss (x237) or Debra Bills (x239).

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Appendix A. Concurrences

Mexican Gray Wolf (*Canus lupus baileyi*)

The Bureau determined that the proposed action may affect but is not likely to adversely affect the Mexican gray wolf. The only extant wild population of Mexican gray wolves near the project area occurs southeast in the Blue Range Wolf Recovery Area and is considered an experimental, non-essential population according to section 10(j) of the Endangered Species Act (Bureau 2002). The recovery area's northern boundary is approximately 30 miles south of the southernmost selected parcel. Past wolf movements have included wandering north toward Springerville and east into New Mexico as well as west onto the Fort Apache Indian Reservation (Bureau 2002, Service 2002b). Mexican wolves are known to make extensive movements and Bureau rationale suggests that one or more individuals may enter the project area again during the recovery effort. However, during an unrelated evaluation, the Service and the Bureau determined no wolves had moved northward into the regional vicinity of the project area due to the lack of interactions with humans or cattle anywhere near the project area (P. Sawyer, pers. comm.).

We concur with the Bureau's determination of may affect, not likely to adversely affect the Mexican gray wolf for the following reasons:

- 1) Surveillance of wolf movements do not indicate a notable preference to wander far enough north as to approach the southern boundary of the project area as the habitat and prey base for wolves are limiting in the project area.
- 2) Although the proposed action does diminish protections under the Endangered Species Act, it does not include a change in land management activity and consequently is discountable and insignificant.

Little Colorado Spinedace (*Lepidomeda vittata*)

The Bureau determined that the proposed action may affect but is not likely to adversely affect the Little Colorado spinedace. There are several records in the Heritage Data Management System from the Little Colorado River within the project area (AGFD 2002). There is no critical habitat for this species in the project area. The only two selected parcels with Little Colorado spinedace habitat were removed from the project due to potential occupation by this species. Other selected parcels are located within the watershed which drains into potentially occupied Little Colorado spinedace habitat. However, the lands are non-contiguous and isolated and most lie more than seven miles away from the Little Colorado River. The project may affect, but is not likely to adversely affect, the Little Colorado spinedace due to the insignificance of any project effect.

We concur with the Bureau's determination of may affect, not likely to adversely affect the Little Colorado spinedace for the following reasons:

- 1) The only two selected parcels with Little Colorado spinedace habitat were removed from consideration for the project. The nearest selected parcels included in the project do exist within the Little Colorado drainage system but are at least seven miles away from potentially occupied Little Colorado spinedace habitat, the river's mainstem.
- 2) Although the proposed action does diminish protections under the Endangered Species Act, it does not include a change in land management activity and consequently is discountable and insignificant.