



# United States Department of the Interior



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In Reply Refer to:  
AESO/SE  
22410-2010-F-0595

April 5, 2011

## Memorandum

**To:** Project Manager, San Carlos Irrigation Project, Bureau of Indian Affairs, Coolidge, Arizona (Attention: Mr. Beau J. Goldstein, RPA)

**From:** Field Supervisor

**Subject:** Biological Opinion on the Proposed San Carlos Irrigation Project's Bureau of Land Management Rights-of-Way Power Lines Project, Pinal County, Arizona (SCIP 2009-249)

Thank you for your request for formal consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your request was dated September 22, 2010, and was received by us via electronic mail on the same date. At issue are the effects that may result from the proposed acquisition of existing rights-of way (ROW) from the Bureau of Land Management (BLM), within which existing electrical lines will be repaired and/or reconstructed. Your September 22, 2010, correspondence concluded that the proposed action may adversely affect the endangered southwestern willow flycatcher (*Empidonax traillii extimus*), the threatened spikedace (*Meda fulgida*), and the species' respective critical habitat.

This biological opinion is based on information provided in: (1) the May 2010 Biological Assessment (BA) for the proposed action; (2) verbal and written interactions between our respective staffs; and (3) other published and unpublished sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the species of concern, and its effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

Please note that this biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statute and the August 6, 2004, Ninth Circuit Court of Appeals decision in *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service* (No. 03-35279) to complete our analysis with respect to critical habitat.

## **Consultation History**

*June 11, 2010:* We received your written correspondence, dated June 10, 2010, transmitting the BA for the proposed action. Your June 10, 2010, correspondence requested our concurrence with your determination that the proposed acting was not likely to adversely affect the southwestern willow flycatcher and spikedeace.

*September 20, 2010:* We informed your staff that we could not concur with your effects determination for the affected species and suggested that formal consultation be requested.

*September 22, 2010:* We received an electronic mail message from your staff requesting formal consultation on the proposed action. The electronic correspondence was followed by a written request on September 24, 2010, received by us on September 27, 2010.

*March 15 2011:* We transmitted a Draft BO to you.

*March 28, 2011:* We received your comments on the Draft BO.

## **BIOLOGICAL OPINION**

### **Description of the Proposed Action**

A complete description of the currently proposed action is found within the May 2010 BA transmitted with your June 10, 2010, letter. In brief, the proposed action consists of the acquisition of ROW for an existing complex of electrical transmission and distribution lines. The ROW would be 20 feet wide for 12.5 kilovolt (kV) distribution lines and 30 feet wide for 69kV transmission lines. The electrical lines within this project are in varying states of repair; some are in use and maintained while others have been abandoned and require major repair or replacement. The proposed action will involve combinations of the following activities, depending on the site: vegetation clearing and access road construction; material staging; hole auguring and erection of structures; string and tensioning of conductors; pole removal; ROW maintenance and operation; fencing and range improvements; clean-up and restoration; and abandonment. Heavy equipment will be employed.

### **Description of the Proposed Conservation Measures**

The BA includes conservation measures intended to avoid or minimize the effects of the construction-related actions described above, including:

- No personnel or equipment will enter the wetted channel of the San Pedro River.
- Equipment will be maintained free of leaks and drips
- Where feasible, vegetation will be trimmed or, for small plants, trampled rather than being completely removed.
- No firearms, campfires, or pets will be permitted at project sites during construction.

- Construction, maintenance, and vegetation management at the Camino Rio Road site will be limited to October 1 to April 30, except for emergencies.
- Herbicide application at the Camino Rio Road site, if necessary, will be with Environmental Protection Agency-approved aquatic herbicides and application methods<sup>1</sup>.
- Where feasible, saguaro cactus (*Carnegie gigantea*) will be avoided. If avoidance is not possible, the cacti may be transplanted.

### **Status of the Species - Southwestern Willow Flycatcher**

The rangewide status of the southwestern willow flycatcher was described in detail in our July 17, 2008, biological opinion on right-of-way maintenance within utility corridors on National Forests in Arizona (File number 22410-2007-F-0365), and is incorporated herein via reference. Additional information can be found in the species' Recovery Plan (FWS 2002).

Southwestern willow flycatcher critical habitat is described in the Final Rule (70 FR 60886: FWS 2005). The primary constituent elements (PCE) of critical habitat include the presence of riparian plant species in a dynamic (successional) riverine environment (for nesting, foraging, migration, dispersal, and shelter), a specific, suitable structure of this vegetation, and the presence of insect populations for food.

### **Environmental Baseline – Southwestern Willow Flycatcher**

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 in the action area to provide a platform to assess the effects of the action now under consultation.

The action area for the proposed action includes only the portion of the proposed action being implemented at Camino Rio Road. The effects to the southwestern willow flycatcher and spokedace (see the respective species' Effects of the Proposed Action sections, below) occur only at this site; the remaining sites are in agricultural or rural residential areas, along existing roads, or in upland areas buffered from the lower San Pedro River by extensive vegetation not proposed for removal or disturbance.

The action area is within the 23,949-acre Middle Gila/San Pedro Critical Habitat Unit as described in the Final Rule (FWS 2005). The closest southwestern willow flycatcher survey site is at Malpais Hill (Site Number AZSP002). The Malpais Hill site has been occupied by as many as 21 resident adult birds and 11 territories (in 2003); no resident adults or territories were located in 2005 (Ellis *et al.* 2008). Adjacent lower San Pedro River survey sites have variable patterns of occupancy, as illustrated in Appendix G of Ellis *et al.* (2008), but abundance is high overall. The lower San Pedro

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<sup>1</sup> Note that the Environmental Protection Agency is currently consulting on "label restrictions" and that the outcome of that consultation may alter the manner in which herbicides may be applied in habitat for threatened and endangered species.

River and the greater Middle Gila/San Pedro Critical Habitat Unit represents an appreciable proportion of the southwestern willow flycatcher territories rangewide.

An analysis conducted by us indicates that the Camino Rio Road ROW is situated in relatively close proximity (approximately 80 to 600 feet) to nineteen of the Malpais Hill-area sites where southwestern willow flycatchers (including mated pairs) were detected between 1999 and 2003 (Ellis *et al.* 2008).

The action area does possess the PCEs of southwestern willow flycatcher critical habitat, including the presence of riparian plant species in a dynamic (successional) riverine environment; a specific, suitable structure of this vegetation; and the presence of insect populations for food.

### **Status of the Species - Spikedace**

The rangewide status of the spikedace was described in detail in our February 9, 2009, biological opinion on the Fossil Creek Range Allotment Management Plan (File number 22410-2007-F-0197), and is incorporated herein via reference. Additional information on the spikedace and its critical habitat can be found in the critical habitat final rule (72 FR 13356; FWS 2005) and the proposed rule (75 FR 66482; FWS 2010), as discussed below.

The primary constituent elements (PCE) of spikedace critical habitat include: (1) permanent and flowing water with low levels of pollutants; (2) sand, gravel, and cobble substrates with low or moderate amounts of fine sediment and substrate embeddedness; (3) streams that have low gradients appropriate for each species; appropriate water temperatures for each species; pool, riffle, run, and backwater components; and abundant aquatic insect food; (4) habitat with no or low levels of detrimental, non-native fish species that allows persistence of spikedace and the species' habitat; and (5) areas within perennial, interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted.

The appropriate and desirable level of these factors may vary seasonally and is highly influenced by site-specific circumstances. Therefore, assessment of the presence/absence, level, or value of the key components must include consideration of the season of concern and the characteristics of the specific location. The key components are not independent of each other and must be assessed holistically, as a functioning system, rather than individually. In addition, the key components need to be assessed in relation to larger habitat factors, such as watershed, floodplain, and streambank conditions; stream channel geomorphology; riparian vegetation; hydrological patterns; and overall aquatic faunal community structure.

On October 28, 2010, we published a proposed rule to uplist both the spikedace and loach minnow from threatened to endangered species and to redesignate the species respective' critical habitat, with some changes (FWS 2010). Notwithstanding the proposal to uplist the spikedace, the species' status was accurately described in the Fossil Creek BO. The lower San Pedro River, including the action area, is among the reaches proposed to be removed from spikedace critical habitat.

## **Environmental Baseline – Spikedace**

Spikedace were last detected in the lower San Pedro River in 1991(USBR 1992). Recent surveys of the Dudleyville area failed to locate spikedace (BLM 2009). Because of the species' small size and low numbers, it is difficult to detect. While we believe that spikedace may remain present in the lower San Pedro and Middle Gila Rivers, particularly following floods that may displace individuals from Aravaipa Creek, we feel their abundance is immeasurably low.

The Middle Gila River reach from the San Pedro River confluence downstream to the Ashurst/Hayden Diversion Dam is within spikedace critical habitat Complex 3, which also includes portions of Aravaipa Creek and the middle Gila River. This reach is subject to regulated discharges from Coolidge Dam, and is occupied by large numbers of nonnative fishes (USBR 2003). As such, the PCEs pertaining to habitat free of injurious nonnative species is highly affected under baseline conditions, while the remaining PCEs pertaining to physical habitat vary on an intra- and interannual basis depending on local hydrology (especially discharges from Aravaipa Creek and the lower San Pedro River) and the operations of Coolidge Dam.

## **Effects of the Proposed Action – Southwestern Willow Flycatcher**

The Camino Rio Road site is located within 50 feet of the upland edge of the riparian stringer adjoining the east bank of the lower San Pedro River. The northern half of the ROW is situated within vegetation indicative of mesic riparian areas, including Fremont cottonwood (*Populus fremontii*), Goodding's willow (*Salix gooddingii*), and tamarisk (*Tamarix* spp.). The southern half of the ROW is characterized by more xeriparian species such as velvet mesquite (*Prosopis velutina*). Upland areas are characterized by species associated with the Upland Subdivision of Sonoran Desertscrub (Brown 1994).

The proposed action is to clear and implement ongoing maintenance activities in a 20 by 325-foot ROW within the riparian vegetation; the patch will not be bisected completely. Indirect effects will result from clearance and ongoing maintenance within the Camino Rio Road ROW, particularly in vegetation adjacent to the Malpais Hill-area sites at which southwestern willow flycatchers have been detected in the past. The entire San Pedro River supports southwestern willow flycatcher migration and dispersal. Clearance of the ROW thus also constitutes a small, but measureable, effect to forage and cover resources for birds originating from outside the action area. The 0.15-acre patch is critical habitat for the southwestern willow flycatcher.

Riparian ecosystems are successional by nature, and exist in dynamic equilibrium with hydrologic processes. Portions of the lower San Pedro River are likely to transition into and out of conditions suitable for southwestern willow flycatcher nesting. These riparian successional processes will be continually suppressed to varying degrees within the Camino Rio Road ROW, reducing the likelihood that riparian vegetation within the ROW will ever regain the species composition, structure, and/or density suitable for nesting. Maintenance of the ROW will modestly, but perpetually, affect the interior-edge ratio of the riparian patch through which the ROW travels, further impeding the patches' ability to support nesting and potentially favoring edge-oriented species, such as the nest-parasitic brown-headed cowbird (*Molothrus ater*).

The northern portion of the ROW is close (approximately 60 feet) to a site at which a pair of southwestern willow flycatchers were detected in 2003 (Ellis *et al.* 2008) and we anticipate a reduced, but difficult-to-quantify, likelihood of detections once the ROW had been cleared. We anticipate that adequate Malpais Hill-area sites for future nesting attempts will remain unaffected and that the density of the remaining riparian vegetation will sufficiently buffer the remaining detection sites from the effects of the ROW clearance.

The proposed conservation measure that restricts non-emergency ROW maintenance to the portions of the year when southwestern willow flycatchers are not resident within the action area will effectively avoid harm to individual birds. The proposed use of vegetation trimming and trampling rather than removal will help preserve the vigor and structure of the riparian vegetation that remains and may reduce the tendency for invasive plants to become established. Maintenance of the ROW is also anticipated to reduce the risk of vegetation-to-conductor contact, which we anticipate will reduce the risk of wildfire in the riparian area.

The proposed action will affect the PCEs pertaining to the presence of riparian vegetation, the structure of that vegetation, and the dynamism of the riverine environment. Riparian vegetation, already of a suitable structure, will be directly removed at the onset of the proposed action and ROW maintenance will impede successional processes over the long term. We do not anticipate that the PCE pertaining to an insect population will be appreciably affected. We note, however, that the Camino Rio Road site is located within a geomorphically active reach of the lower San Pedro River (see BA Appendix A-14). The ROW is located within 50 feet of the adjacent, upland vegetation and is thus not within the core of riparian patch it will affect. Further, the ROW is situated on the upstream, outside edge of a meander bend in a reach displaying evidence of active erosion and aggradation via channel braiding and recruitment of riparian vegetation. It is likely that, over time, the San Pedro River channel will migrate laterally, either gradually or by an episode of rapid avulsion, allowing new riparian vegetation to become established in other locations within the immediate area and the reach in general. The 0.15-acre clearing of riparian vegetation thus constitutes a temporal loss of southwestern willow flycatcher critical habitat and PCEs, though we note that it represents  $6.26 \times 10^{-4}$  percent of the 23,949-acre Middle Gila/San Pedro Management Unit and  $1.24 \times 10^{-4}$  percent of the 120,824 acres of critical habitat rangewide. The magnitude of these effects is too small to affect recovery of the species.

### **Effects of the Proposed Action – Spikedace**

Spikedace are immeasurably rare in the lower San Pedro River, so the likelihood of spikedace occupying the river reach adjacent to the Camino Rio Road ROW is remote. The effects discussed herein are to the species' habitat, including critical habitat.

The geometry of the 0.15-acre ROW at the Camino Rio Road is linear; the effects therefore resemble those associated with roads. At the watershed scale, dirt road networks can modify natural drainage networks and accelerate erosion processes. These changes can alter physical processes that govern stream dynamics including the following: changes in flow regimes, sediment transport and storage, bank and bed configuration, and substrate composition. These changes have been documented to have biological consequences that affect a wide array of ecosystem components

fundamental to fish habitat (Furniss *et al.* 1991). The effects of road networks on aquatic habitat increase with proximity to fish habitat such as stream crossings. The proposed Camino Rio Road ROW is located within 50 feet of the adjacent, xeric uplands and is thus only somewhat proximal to the San Pedro River; it is unlikely to exhibit effects of this nature. The ROW does connect to a larger road (Camino Rio Road) but it parallels the stream and does not cross it. The ROW terminus is within riparian vegetation which will buffer any sediment that may be generated from the cleared area.

We anticipate that the proposed conservation measures will further ensure that impacts to riparian and aquatic ecosystems are avoided or minimized. No personnel or equipment will enter the wetted channel of the San Pedro River and all construction equipment will be maintained free of leaks and drips. The proposed trimming and trampling of riparian vegetation – as opposed to complete removal – will help ensure the remaining plants retain vigor and that exposed soil will be protected from excessive erosion. Herbicide application at the Camino Rio Road site, if necessary, will be with Environmental Protection Agency-approved aquatic herbicides and application methods.

The proposed action is anticipated to have minor effects the PCEs pertaining to levels of fine sediment and substrate embeddedness (PCE 2). The ROW is small in areal extent and will be largely surrounded by dense, intact vegetation. Erosion-mitigating conservation measures will be employed vegetative buffering. Regardless, we do anticipate some residual effects. The ROW also exhibits PCE 5, which is related to backwaters for spikedece rearing and refuge during floods. We anticipate that the floodplain upon which the ROW is to be situated is infrequently inundated; the site is adjacent to xeric uplands and elevated flows are likely preferentially conducted directly across the meander bend, over the less-vegetated, perched flood channels on the river's east bank (see Appendix A-14). The site therefore serves infrequently as a backwater habitat, and for short duration. The effects to the backwater-related PCEs 1 and 2 (water quality) and PCE 3 (food source) will not be appreciably affected.

Lastly, the Camino Rio Road ROW is located within 50 feet of uplands and on the upstream, outside edge of a meander bend in a reach displaying evidence of active erosion and aggradation via channel braiding and recruitment of riparian vegetation. It is likely that, over time, the San Pedro River channel will migrate laterally, either gradually or by an episode of rapid avulsion, allowing new riparian vegetation to become established in other locations within the immediate area and the reach in general. The 300 linear feet of clearing of riparian vegetation thus constitutes a temporal loss of spikedece critical habitat and PCEs, though we note that it represents 0.07 percent of the 80.5 miles of Complex 3 of spikedece critical habitat (which includes portions of Aravaipa Creek and the lower San Pedro and middle Gila rivers). The magnitude of these effects is too small to affect recovery of the species.

### **Cumulative Effects – Southwestern Willow Flycatcher**

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

The primary cumulative effects affecting southwestern willow flycatchers in the action area are related to livestock grazing (on State and private lands) and off-highway-vehicle use within and adjacent to the Gila River. Cumulative effects resulting from upland, land-disturbing activities (livestock grazing, road use) will continue to deliver sediment to the action area. Impairments to water quality from past and present mining activities are also anticipated to continue.

### **Cumulative Effects – Spikedace**

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

Effects to spikedace from activities on State and private lands would include the following: (1) changes in land use patterns around designated critical habitat that further fragment, modify, or destroy upland or riparian vegetation, thereby negatively affecting water quality and quantity and the primary constituent elements of critical habitat; (2) encroachment of human development, road networks or recreational sites that remove upland or riparian vegetation, and potentially degrade water quality and habitat quality; (3) water withdrawals or diversions of aquatic habitats that reduce water quantity and quality; (4) additional competition with and predation by alien fish species introduced through fishing or recreational use of critical habitat; (5) agricultural or grazing practices that degrade water quality or destroy potential spawning sites in critical habitat; (6) fire management actions by State, county, or city governments or private landholders on lands adjacent to or upstream from occupied sites or reaches that reduce the potential for riparian and catastrophic upland wildfires, as well as loss of vegetation and negative changes to water quality and habitat quality; and (7) increased accidental or intentional fire starts by the public or private landholders on lands adjacent to or upstream from critical habitat or reaches that increase the potential for riparian and catastrophic upland wildfires, as well as loss of vegetation and negative changes to water quality and habitat quality.

### **Conclusion – Southwestern Willow Flycatcher**

After reviewing the current status of the southwestern willow flycatcher, the environmental baseline for the action area, the effects of the proposed clearing and maintenance activities at the Camino Rio Road ROW, and the cumulative effects, it is our biological opinion that the action, as proposed, is neither likely to jeopardize the continued existence of the southwestern willow flycatcher, nor likely to destroy or adversely modify critical habitat for the species. We present these conclusions for the following reasons:

- Southwestern willow flycatchers are known to occur on the lower San Pedro River, including in relatively close proximity to the patch of riparian vegetation in which the action area is situated. The ROW is situated 50 feet from upland, xeric vegetation and does not bisect the core of the riparian patch within which most sightings of paired birds have occurred.
- Implementation of the conservation measures (see the Description of the Proposed Conservation Measures section, above, and in the BA) would greatly minimize negative impacts to nesting

willow flycatchers, as well as occupied, suitable, and potential habitat, although flycatchers may still experience some minor residual indirect effects from the proposed management activities.

- Overall, the clearing of 0.15 acre of vegetation is not expected to affect the numbers, reproduction, or distribution of the southwestern willow flycatcher in the Middle Gila/San Pedro Management Unit or rangewide.
- The proposed action is anticipated to reduce the threat of catastrophic wildfire along the lower San Pedro River by reducing the threat of wildfire from an unmaintained ROW.
- The effects to the PCEs within 0.15 acre of southwestern willow flycatcher critical habitat that may remain under full implementation of the conservation measures are small in scale and unlikely to result in the adverse modification or destruction of the critical habitat. These residual effects are immeasurably small relative to the amount of critical habitat available in the Middle Gila/San Pedro Management Unit (23,949 acres) and throughout the species' range (120,824 acres). The ability of the area to continue to contribute to the recovery of the southwestern willow flycatcher will not be measurably reduced.

### **Conclusion – Spikedace**

After reviewing the current status of the spikedace, the environmental baseline for the action area, the effects of the proposed clearing and maintenance activities at the Camino Rio Road ROW, and the cumulative effects, it is our biological opinion that the action, as proposed, is neither likely to jeopardize the continued existence of the spikedace, nor likely to destroy or adversely modify critical habitat for the species. We present these conclusions for the following reasons:

- Spikedace are likely to occur in the lower San Pedro River in densities small enough to evade detection by infrequent surveys.
- The ROW is situated 50 feet from upland, xeric vegetation, making it unlikely that the site is inundated (and capable of serving as a backwater rearing area) frequently
- The ROW terminates in a vegetated buffer, and does not cross the river. These attributes make it unlikely that the site will conduct water and erode, thus increasing the substrate embeddedness of the San Pedro River.
- The effects to PCEs 1, 2, and 3 are expected to be small in scale and temporary in nature. These residual effects are immeasurably small relative to the amount of critical habitat available on the lower San Pedro River (13.4 river miles), in the middle Gila/lower San Pedro/Aravaipa Creek critical habitat unit (85.5 river miles), and rangewide (522.2 river miles). The ability of the area to continue to contribute to the recovery of the spikedace will not be measurably reduced.

### **INCIDENTAL TAKE STATEMENT**

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. “Harm” is further defined (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. “Harass” is defined (50 CFR 17.3) as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to,

breeding, feeding or sheltering. “Incidental take” is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

### **Amount or Extent of Take – Southwestern Willow Flycatcher**

As demonstrated in the Environmental Baseline and Effects of the Proposed Action sections, above, southwestern willow flycatchers are unlikely to be directly or indirectly affected by implementation of the proposed action. We, therefore, do not anticipate that implementation of the proposed action will result in the incidental take of any individuals of the species.

### **Conservation Recommendation – Southwestern Willow Flycatcher**

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

- We recommend that the Bureau of Indian Affairs and the San Carlos Irrigation Project continue to implement the southwestern willow flycatcher recovery plan.

For us to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitat, we request notification of the implementation of any conservation recommendations.

### **Amount or Extent of Take – Spikedace**

As demonstrated in the Environmental Baseline and Effects of the Proposed Action sections, above, spikedace are unlikely to be directly or indirectly affected by implementation of the proposed action. We, therefore, do not anticipate that implementation of the proposed action will result in the incidental take of any individuals of the species.

### **Conservation Recommendation – Spikedace**

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

- We recommend that the Bureau of Indian Affairs and the San Carlos Irrigation Project continue to implement the spikedace and loach minnow recovery plan.

For us to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitat, we request notification of the implementation of any conservation recommendations.

### **Reporting Requirements/Disposition of Dead or Injured Listed Animals**

Upon finding a dead or injured threatened or endangered animal, initial notification must be made to the FWS's Division of Law Enforcement, 2450 West Broadway, Mesa, Arizona (480-967-7900) 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 animal, a photograph, and any other pertinent information. Care must be taken in handling injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible condition. If feasible, the remains of intact specimens of listed animal species shall be submitted as soon as possible to the nearest FWS or Arizona Game and Fish Department office, educational, or research institutions (e.g., University of Arizona in Tucson) holding appropriate state and Federal permits.

Arrangements regarding proper disposition of potential museum specimens shall be made with the institution before implementation of the action. A qualified biologist should transport injured animals to a qualified veterinarian. Should any treated listed animal survive, the FWS should be contacted regarding the final disposition of the animal.

### **REINITIATION AND CLOSING STATEMENT**

This concludes formal consultation on the Bureau of Indian Affairs' BLM Rights-of-Way Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may adversely affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency 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 action.

We appreciate the Bureau of Indian Affairs' efforts to identify and minimize effects to listed species from this project. For further information please contact Jason Douglas (520) 670-6150 (x226) or Scott Richardson (520) 670-6150 (x242). Please refer to the consultation number, 22410-F-2010-0595 in future correspondence concerning this project.

*/ s / Mima Falk for*  
Steven L. Spangle

cc (hard copy):

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Assistant Field Supervisor, Fish and Wildlife Service, Tucson, Arizona

cc (electronic copy):

Tucson Field Office (Attn: Linda Dunlavey), Bureau of Land Management, Tucson, Arizona

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