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In Reply Refer To:

AESO/SE  
02EAAZ00-2013-F-0168

May 8, 2015

Memorandum

To: State Director, Bureau of Land Management, Santa Fe, New Mexico

From: Field Supervisor

Subject: Conference Opinion on Effects of the SunZia Transmission Line Project on Western Yellow-billed Cuckoo Proposed Critical Habitat

Thank you for your November 14, 2014 memorandum received in our office on November 18, 2014, requesting formal conference in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). At issue are impacts to proposed critical habitat for the western yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo) at crossings of the Rio Grande River in New Mexico and San Pedro River in Arizona by the proposed 500-kV SunZia Southwest Transmission Line Project (SunZia Project). The proposed action is for the U.S. Bureau of Land Management (BLM) to issue a right-of-way grant to SunZia Transmission, LLC for the construction and operation of two 500-kV transmission lines from the proposed SunZia East Substation in northwestern Lincoln County, New Mexico, through Lincoln, Socorro, Sierra, Luna, Grant, and Hidalgo counties in New Mexico, and Greenlee, Graham, Cochise, Pima, and Pinal counties in Arizona to the Pinal Central Substation in Pinal County (Figure 1).

This conference opinion (CO) is based on information provided in the May 2013 *Biological Assessment for the SunZia Southwest Transmission Project* (BA) (BLM 2013a), the June 2013 *Final Environmental Impact Statement and Proposed Resource Management Plan Amendments for the SunZia Southwest Transmission Project* (FEIS/PRMPAs) (BLM 2013b), supplemental information transmitted with your November 14, 2014 memorandum, email correspondence, telephone conversations, and other sources of information. Literature cited in this conference opinion is not a complete bibliography of all literature available on the species of concern, transmission line construction and its effects, or on other subjects considered in this opinion. A complete administrative record of this conference is on file at this office (file number 02EAAZ00-2013-F-0168).

## Conference History

- April 1, 2013 We received your draft BA and request for formal conference on the SunZia Project on effects to the proposed western yellow-billed cuckoo.
- November 13, 2013 We transmitted a final conference opinion regarding effects to the cuckoo from the SunZia project.
- August 15, 2014 U.S. Fish and Wildlife Service (FWS) published a proposed rule (79FR48548) to designate critical habitat for the western distinct population segment (DPS) of the yellow-billed cuckoo.
- October 3, 2014 FWS published a final rule (79FR5991) determining threatened status under the Endangered Species Act for the western yellow-billed cuckoo.
- November 18, 2014 We received supplemental information on cuckoo proposed critical habitat within the project area, your request to confirm our November 2013 conference opinion as a biological opinion, and your request for formal conference on proposed critical habitat.
- December 19, 2014 We sent you a memorandum adopting the formal conference opinion as the biological opinion for the cuckoo for the SunZia Project
- January 13, 2015 We initiated the formal conference on proposed critical habitat for the cuckoo.
- April 14, 2015 We sent you our draft Conference Opinion.

## CONFERENCE OPINION

### DESCRIPTION OF THE PROPOSED ACTION

A summary of the project description was included in our November 2013 conference opinion (file number 02EAAZ00-2013-F-0168). Additional information regarding proposed critical habitat for the cuckoo was provided in BLM's November 14, 2014 memorandum and in the BA (Section 6.2.6.3). This conference opinion concerns the effects to proposed critical habitat for the cuckoo at two crossings, one at the Rio Grande River in Socorro County, New Mexico, and the other at the San Pedro River in Cochise County, Arizona.

Two 500-kV overhead transmission lines would be constructed; however, the final configuration has not been determined (i.e., whether both lines will be operated as alternating current or one as direct current and the other as alternating current). Each transmission line would extend between the proposed SunZia East Substation and the Pinal Central Substation. Preliminary engineering has been developed to support detailed estimates of ground disturbance and other impacts where the transmission line would cross proposed cuckoo critical habitat at the Rio Grande River and San Pedro River (Figures 2 and 3). Project activities relevant to the river crossings would include: 1) preconstruction activities, including right-of-way and land acquisition, geotechnical investigations, and centerline survey; 2) construction activities, including access roads,

equipment staging and construction yards, structure pad and right-of-way preparation, foundation installation, structure assembly and erection, ground rod installation, stringing conductors and groundwire, waste removal, and reclamation; 3) operation and maintenance, including vegetation management and herbicide use; and 4) decommissioning.

The November 14, 2014 memorandum provided supplemental information on permanent ground disturbances and disturbances due to vegetation management at the Rio Grande and San Pedro River crossings. Vegetation at the two crossings would be maintained in 2 wire zones and 3 border zones (Figure 4). Each wire zone would be 90 feet wide and encompass areas directly below the lattice cross arms and suspended conductors of each transmission line. One border zone, between the two lines, would be 110 feet wide. The additional border zones, each 55 feet wide, would encompass areas at the outer edge of each line. Vegetation management within the right-of-way would meet a goal of a maximum tree height of 12 feet at the point of lowest conductor sag within the wire zone, allowing for conductor sway while still achieving or exceeding minimum required clearances (Figures 4 and 5). Vegetation management within the border zones would meet a goal of a maximum tree height of 25 feet (Figure 4). Trimming of vegetation to assure these clearances would occur every 3-5 years or as necessary. All vegetation management would be conducted between September 15 and March 1, i.e., outside the cuckoo breeding period, except in emergencies.

At the Rio Grande River, vegetation directly under or within approximately 10 feet of the conductors horizontally would be maintained at the 12-foot nominal height. Vegetation within the right-of-way but outside the wire zone would be maintained to a height of approximately 25 feet. Vegetation beyond the right-of-way would not typically be maintained, but hazard trees with the potential to grow or fall into the right-of-way, within the minimum required clearances, would selectively be trimmed or removed. All trees within the structure work areas would be removed and low-growing vegetation would be planted for reclamation in those areas.

Permanent disturbances at the Rio Grande crossing will include 1.11 acres (ac) for road improvements and 4.78 ac for structure pads, for a total of 5.89 ac (Table 1). Vegetation management will include 8.97 ac for the wire zone and 10.95 ac for the border zone, for a total of 19.92 ac of periodic disturbance at the Rio Grande crossing (Table 1).

Vegetation at the San Pedro River would be maintained relative to the base of the structures rather than the level of the floodplain due to the terrain at this location. Canopy height of the mesquite bosque in the floodplain at this location is similar to the elevation at the proposed structure locations, sited above the floodplain. Thus, only individual tree tops or branches would selectively be trimmed if they exceed a height of 12 feet above the base elevation of the structures within the wire zone, or 25 feet above the base elevation of the structures within the border zone. The river channel is approximately 20-30 feet lower in elevation than the structure locations; thus, trees in the wire zone would be allowed to reach heights of 12 feet near the structures to approximately 42 feet along the river channel before selective trimming would be necessary.

Permanent disturbances at the San Pedro River crossing would include 0.28 ac for structure pads (there would be no losses due to road improvements; Table 1). Vegetation management would

include 4.87 ac for the wire zone and 5.98 ac for the border zone, for a total of 10.85 ac of periodic disturbance at the San Pedro crossing (Table 1).

Total disturbances (permanent and from vegetation management) at the Rio Grande crossing would involve a total of 25.81 ac. Total disturbances (permanent and from vegetation management) at the San Pedro crossing would involve a total of 11.13 ac. Permanent disturbances at both river crossings combined would result in the loss of 6.17 ac of riparian habitat. Periodic vegetation management at both river crossings combined over the life of the project would result in effects to 30.77 ac. Thus, effects of the project to cuckoo proposed critical habitat involve a total of 36.94 ac (Table 1).

### **Action Area**

The action area is defined as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action (50 CFR § 402.02). In delineating the action area, we evaluated the farthest reaching physical, chemical, and biotic effects of the action on the environment, focusing on the river crossings at the Rio Grande River and San Pedro River. However, the action area includes the 8-mile-wide corridor, as defined in the FEIS, Table 3-1 (BLM 2013b), centered on the reference centerline of the transmission line configuration in BLM's preferred alternative (Figure 1).

### **Term**

The term of the BLM right-of-way grant to allow use of Federal land would be limited to 50 years, although the potential project life is 75 years.

### **Conservation Measures**

Conservation measures include those identified in the BA (BLM 2013a) as project-wide Standard Mitigation Measures and more site and species-specific Selective Mitigation Measures. Where sensitive locations are identified, avoidance of impacts as described in Standard Mitigation Measures and Selective Mitigation Measures (described in the BA) would be a condition of the right-of-way grant. The terms Standard Mitigation Measures and Selective Mitigation Measures are used by BLM in the BA and are considered conservation measures herein for section 7 consultation purposes.

Standard and selective mitigation measures would reduce direct impacts to riparian woodlands through the minimization of ground disturbance and vegetation management. In addition to these mitigation measures, the following conservation measures would minimize impacts to proposed critical habitat for the cuckoo:

- Unguyed, self-supporting lattice or tubular structures would be used at the Rio Grande crossing to reduce the width of the right-of-way and associated fragmentation of riparian woodland by up to 20 feet. Placement of self-supporting dead-end lattice towers on the east side of the San Pedro crossing, and self-supporting lattice tangent towers on elevated landforms adjacent to the floodplain on the west side, i.e., at heights sufficient to

minimize the need for vegetation removal and tree topping, would reduce impacts to the existing mesquite bosque.

- BLM, SunZia Transmission, LLC, and FWS are working to identify and acquire habitat to offset the temporary and permanent disturbance that would take place within proposed critical habitat. No specific parcels have been identified at this time; however, compensatory mitigation is a committed measure and would be a condition of the right-of-way grant and Notice to Proceed.

## **STATUS OF PROPOSED CRITICAL HABITAT**

FWS proposed designation of 546,335 acres of critical habitat for the western yellow-billed cuckoo in 80 units in California, Arizona, New Mexico, Colorado, Utah, Idaho, Nevada, Wyoming, and Texas on August 15, 2014 (79FR48548). FWS proposed the following primary constituent elements (PCEs) for cuckoo critical habitat:

*PCE 1: Riparian woodlands.* Riparian woodlands with mixed willow and cottonwood vegetation, mesquite-thorn forest vegetation, or a combination of these that contain habitat for nesting and foraging in contiguous or nearly contiguous patches that are greater than 325 feet (100 meters) in width and 200 acres (81 hectares) or more in extent. These habitat patches contain one or more nesting groves, which are generally willow-dominated, have above average canopy closure (greater than 70 percent), and have a cooler, more humid environment than the surrounding riparian and upland habitats.

*PCE 2: Adequate prey base.* Presence of a prey base consisting of large insect fauna (for example, cicadas, caterpillars, katydids, grasshoppers, large beetles, dragonflies) and tree frogs for adults and young in breeding areas during the nesting season and in post-breeding dispersal areas.

*PCE 3: Dynamic riverine processes.* River systems that are dynamic and provide hydrologic processes that encourage sediment movement and deposits that allow seedling germination and promote plant growth, maintenance, health, and vigor (e.g. lower gradient streams and broad floodplains, elevated subsurface groundwater table, and perennial rivers and streams). This allows habitat to regenerate at regular intervals, leading to riparian vegetation with variously aged patches from young to old.

## **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 conference 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 conference.

## Description of the Action Area

We have focused our description of the action area on the two river crossings that are pertinent to this conference. The project crosses riparian habitat for cuckoos at the Rio Grande River and San Pedro River. Proposed critical habitat units at these crossings include NM-8, at the Rio Grande River crossing, and AZ-18 at the San Pedro River crossing (79FR48548).

### Rio Grande River Crossing

Proposed critical habitat unit NM-8, an approximately 170-mi-long continuous segment of the lower Rio Grande River, from Elephant Butte Reservoir in Sierra County, upstream through Socorro, Valencia, and Bernalillo Counties, to below Cochiti Dam in Cochiti Pueblo in Sandoval County, New Mexico, includes 61,959 ac. During surveys conducted by Ahlers *et al.* (2009) in this unit, a cuckoo nesting territory was detected approximately 0.25 mi downstream of Escondida Bridge, approximately 250-500 feet north of the proposed SunZia crossing, and detection of a single individual occurred 1 mile downstream of the crossing. Surveys in 2013 included detections of 4 individuals between the Escondida Bridge and the proposed crossing (Ahlers *et al.* 2013).

### San Pedro River Crossing

Proposed critical habitat unit AZ-18 is an approximately 83-mi-long segment of the Upper San Pedro River, from the border with Mexico north to the vicinity of the Town of Saint David, in Cochise County, Arizona. The Three Links conservation property, 1.75 to 5 miles north to northwest of the proposed crossing at the San Pedro River is the nearest known site occupied by cuckoos in this unit. Cuckoo detections occurred here during several southwestern willow flycatcher (*Empidonax traillii extimus*) surveys, from 2004-2013, and during cuckoo breeding season playback surveys, in 2012 and 2013, but the number of breeding territories is unknown (Tucson Audubon Society Chapter unpubl. data; U.S. Bureau of Reclamation [USBR] unpubl. data). The greatest number of cuckoos in Arizona, up to 52 pairs, have been counted within BLM's San Pedro Riparian National Conservation Area, beginning approximately 18 miles south of the proposed San Pedro crossing, and extending to the U.S./Mexico border (Halterman 2009, Vernadero Group 2009). The Three Links property and the San Pedro Riparian National Conservation Area lie within the AZ proposed critical habitat unit, but only the Three Links property is within the action area.

## A. Status of proposed critical habitat in the action area

### Rio Grande River

The west bank of the Rio Grande River crossing supports a narrow band of saltcedar (*Tamarix* spp.) and non-riparian vegetation between the river and an existing levee. Saltcedars and other riparian trees are limited to a band, typically a single tree wide along the bank of the river, with scattered individual trees between the river and the levee. No patches of closed-canopy riparian vegetation >33 feet wide or >0.25 ac in size are present on the west bank of the proposed right-of-way (BLM 2013a). The east bank of the river is bordered by a narrow strip of mixed native and non-native trees, typically a single tree wide along the bank of the river, partially fragmented

by existing unpaved roads. Tree species here include narrowleaf willow (*Salix exigua*), salt cedar, and Russian olive (*Elaeagnus angustifolia*). The remainder of the east floodplain in this location is a mixture of cottonwoods (*Populus* spp.) and upland vegetation, e.g., junipers (*Juniperus* spp.) and chollas (*Cylindropuntia* spp.). As with the west bank, no patches of closed-canopy riparian vegetation >33 feet wide or >0.25 ac in size are present on the east bank within the proposed right-of-way (BLM 2013a). However, patches of suitable and potentially suitable habitat are present upstream and downstream, and patches of riparian woodland habitat become larger and increasingly contiguous approximately 1 mile from the proposed crossing, in both directions and on both sides of the river (Ahlers *et al.* 2009).

#### San Pedro River

The floodplain at the San Pedro River crossing is dominated by a mesquite (*Prosopis* spp.) bosque, with individual willow (*Salix* spp.), saltcedar, and cottonwood present in very small numbers. The crossing area lacks the multiple layers of canopy and subcanopy riparian vegetation and well developed understory that constitute the riparian woodland PCE of proposed critical habitat, and that is preferred as breeding habitat by the yellow-billed cuckoo (Laymon and Halterman 1989); however, mesquite bosques are used by cuckoos for nesting (Hamilton and Hamilton 1965, Howe 1986), and current habitat conditions at the SunZia crossing are suitable for foraging and for use by migrating birds. In addition, suitable riparian nesting habitat exists upstream and downstream of the crossing.

### **B. Factors affecting proposed critical habitat within the action area**

#### Rio Grande River

The Rio Grande River within the project area is highly regulated and developed, which restricts development of physical and biological features of cuckoo proposed critical habitat. The river here is a simple channel, with a levee on the west bank, lacking backwater sloughs or braiding. Flows here do not overtop the banks except in extreme events. Because of the low probability of overbank flow in the project area, the constraining levee, and the degraded (downcut) nature of the channel (Ahlers *et al.* 2010), the probability of recruitment of cottonwood and willow away from the channel margin is low. The overstory in this portion of the action area consists of large mature trees, and evidence of ongoing recruitment is not apparent. The cottonwood trees are likely relics of pre-river regulation circumstances. Likewise much of the salt cedar in the crossing consists of large mature plants. However, willows have become established on bars and low terraces downstream of the proposed crossing, where the channel widens.

Land at the Rio Grande crossing is administered by the Middle Rio Grande Conservancy District (MRGCD). Ongoing consultation regarding the *Joint Biological Assessment, Bureau of Reclamation and Non-Federal Water Management and Maintenance Activities on the Middle Rio Grande, New Mexico* (U.S. Bureau of Reclamation [USBR] 2012) addresses MRCGD maintenance activities. BLM is not aware of any additional ongoing or future actions in this location. Any new actions would likely occur under authority of the Clean Water Act permitting process or through the USBR's jurisdiction over flows in the Rio Grande.

## San Pedro River

The San Pedro River is not a regulated river, but flows are subject to depletion through groundwater pumping and other factors (Hereford 1993). The river bed is dry at the proposed crossing. In areas near the proposed crossing, e.g., at The Narrows, just upstream (south) of the proposed crossing, the river is predominately an intermittent stream (Arizona Department of Water Resources [ADWR] 2010). Depth to groundwater is in the range of 27 to 116 feet below the elevation of the channel bottom at the U.S. Geological Survey (USGS) gauge site at The Narrows, based on records from 1950-2010 (U.S. Geological Survey 1979, ADWR 2010). There are scattered individual cottonwood trees in the vicinity of the proposed SunZia crossing, but the groundwater is apparently too deep to support the riparian woodland PCE of cuckoo proposed critical habitat.

The San Pedro River crossing is located within Arizona State Trust Land on the Three Links Grazing Allotment, which is managed for the benefit of the trustees. State lands west of the crossing are within the White House Allotment. Cattle grazing occurs in these allotments but does not take place in the floodplain or mesquite bosques at the proposed crossing. Properties that support cuckoo habitat include the San Pedro Riparian National Conservation Area and Three Links Farm, which has conservation easements held by The Nature Conservancy and U.S. Bureau of Reclamation (USFWS 2013). Tucson Electric Power maintains infrastructure and manages vegetation along two existing 345-kV lines which cross the river approximately 0.6 miles north of the proposed San Pedro crossing. Routine maintenance of vegetation at these crossings may also affect proposed critical habitat for the cuckoo.

### **EFFECTS OF THE ACTION**

Effects of the action refer to the direct and indirect effects of an action on the critical habitat, together with the effects of other activities that are interrelated and interdependent with that action that would be added to the environmental baseline. 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. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur.

The proposed action would result in disturbance during construction of a 515-mile-long 500-kV transmission line corridor, in one 400-foot-wide right-of-way or two 200-foot-wide rights-of-way, from Lincoln County, New Mexico to Pinal County, Arizona, and from construction of two substations, fiber optic regeneration facilities, and other ancillary facilities. The project crosses areas that include proposed critical habitat for the western yellow-billed cuckoo at two river crossings: the Rio Grande River in New Mexico and San Pedro River in Arizona.

Effects of the proposed action are evaluated on the basis of three primary constituent elements (PCEs) described in the proposed critical habitat rule (79FR48548) and summarized above on Page 5: 1) riparian habitat; 2) adequate prey base; and 3) dynamic riverine processes.

*PCE 1: Riparian woodlands.*

Permanent and temporary ground disturbance, vegetation removal, and alterations of vegetation would take place within proposed critical habitat at both crossings during construction of the SunZia transmission line and during routine vegetation management throughout the life of the project, affecting PCE 1. The project as proposed would not cause the loss of any known cuckoo nesting territories.

During the construction phase, each structure (transmission tower) within proposed critical habitat at the Rio Grande crossing would require a cleared work area approximately 200 by 200 feet, although the configuration may be modified slightly by terrain or other constraints. Pulling and tensioning sites near the Rio Grande would be outside proposed critical habitat. Work areas would be completely cleared of riparian or other vegetation during construction, resulting in the removal of overstory and understory cottonwood, willow, tamarisk, and mesquite trees. Low growing grasses, forbs, and small shrubs would be used for reclamation and would be allowed to remain during operation of the SunZia line.

Ground disturbance would also occur after construction if required for structure repair or maintenance (e.g., during a natural disaster or other emergency). These types of disturbances would typically occur within previously disturbed work areas. Existing roads would provide access near each proposed structure location at the Rio Grande crossing; however, the majority of these roads would need to be improved, typically by widening them to 24 feet. Short spur roads might be necessary to reach each structure construction site.

Transmission towers at the San Pedro River crossing and tensioning and pulling sites are all outside proposed critical habitat areas. On the east side of the river, access for construction would occur along an existing county road. Access on the west side would occur along an existing access road for a 345-kV transmission line operated by Tucson Electric Power Company. No road improvements would be necessary on the west or east side of the proposed San Pedro River crossing.

Post-construction activities (hazard vegetation removal and routine vegetation maintenance) would occur at both river crossings. In the wire zones, trees more than 10 to 15 feet high would require trimming during maintenance over the project's lifetime (Figure 4). Vegetation management within the border zones would meet a goal of a maximum tree height of 25 feet (Figure 4). Vegetation outside the right-of-way would not typically be maintained, but hazard trees with the potential to grow or fall into the right-of-way, within the minimum required clearances, would selectively be trimmed or removed.

In summary, within the two rights-of-way, at the river crossings, where cuckoo proposed critical habitat occurs, transmission line construction activities, access roads, and tower footpads would result in permanent ground disturbance and partial vegetation removal within a total of 6.17 ac of riparian habitat (Table 1). Periodic temporary disturbance related to vegetation management and maintenance over the life of the project would affect 30.77 ac. Permanent ground disturbance would preclude the recovery and development of riparian woodlands around the base of structures, and vegetation management would affect successional processes and the rate and degree of recovery of riparian woodlands within the remainder of the right-of-way. Future recovery of nesting habitat at the Rio Grande or San Pedro River crossings could occur, but the

success of that recovery may be reduced by maintenance activities unrelated to project activities within the right-of-way and by riverine processes that currently do not enhance recovery potential within the affected areas (see discussion below).

*PCE 2: Adequate prey base.*

Ground disturbance and vegetation management at the two river crossings would take place within proposed critical habitat, potentially affecting PCE 2. Along these corridors, permanent removal of riparian habitat during construction, and removal, trimming, and thinning of riparian vegetation in the post construction period would likely reduce the diversity and abundance of the cuckoo's preferred prey—caterpillars (*Lepidoptera* spp.), katydids (*Tettigoniidae* sp.), cicadas (*Cicadidae* spp.), grasshoppers (*Caelifera* spp.), and other large insects (Nolan and Thompson 1975, Laymon 1980). It is difficult to estimate the extent of prey base effects; however, given that ground disturbance and vegetation management would occur within slightly <37 ac at both crossings combined, effects to cuckoo preferred prey species would be minor.

*PCE 3: Dynamic riverine processes.*

The Rio Grande River within the action area is a simple channel with a levee on the west bank and no backwater sloughs or braiding. Within the action area, the San Pedro River is a dry riverbed with small sections of ephemeral and perennial water upstream and downstream of the proposed crossing. Thus, the rivers at both crossings are already highly impacted, and construction activities for the proposed project, and vegetation maintenance for the life of the project, are not likely to further alter the nature of these rivers, with the exception of erosion that may occur within the action area due to construction and other activities.

Erosion resulting from road improvements, construction of structure sites, and management of vegetation could cause erosion impacts at the two river crossings. Floodplains of many major rivers contain a variety of existing agricultural and residential activities, and surrounding uplands often contain extensive networks of formal and informal roads. Transmission line access roads and work areas create additional ground disturbance, adding to existing conditions that can result in unnaturally high levels of erosion. Soil erosion in upland areas results in lower moisture holding capacity and loss of nutrient-rich topsoil from the watershed. In riparian areas, soil erosion may eliminate existing vegetation and limit recovery of vegetation that has been disturbed. In addition to their direct contribution to erosion, access roads and construction and maintenance activities associated with transmission lines may open up areas to future development and recreation and the creation of additional roads (Cascabel Working Group 2010).

A number of design features of the proposed transmission line and selective mitigation measures, as outlined in the FEIS (BLM 2013b), would reduce erosion effects within the action area and at the proposed Rio Grande and San Pedro River crossings. Tensioning and pulling sites at both crossings would be located outside of critical habitat for the western yellow-billed cuckoo. There would be no blading of new access roads at the San Pedro River crossing, and new road construction at the Rio Grande River would be minimal. Improvements to existing roads at the Rio Grande River crossing would be limited to those necessary to make the roads passable.

Relying on existing access roads would assure that use of proposed critical habitat areas for recreation and other activities would be minimized.

In summary, although there would be long-term effects to the PCEs of proposed critical habitat from vegetation removal, loss of prey base, and possibly increased erosion affecting recovery of riparian habitat, these effects would be small in extent and magnitude and we expect that the function of these critical habitat units for conservation of the cuckoo would not be impeded.

## **CUMULATIVE EFFECTS**

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 conference 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 Endangered Species Act. Approximately 64 percent of the action area is State and private land. Ongoing residential and commercial development along with recreation, vegetation management, and other activities would likely continue on state and private lands and may or may not affect the condition of proposed yellow-billed cuckoo critical habitat.

## **CONCLUSION**

After reviewing the current status of proposed critical habitat for the western yellow-billed cuckoo, the environmental baseline for the action area, the effects of the proposed SunZia Southwest Transmission Line Project, and the project's cumulative effects, it is the FWS's conference opinion that the SunZia Southwest Transmission Line Project, as proposed, is not likely to destroy or adversely modify proposed critical habitat for the western yellow-billed cuckoo for the following reasons:

- We anticipate minor effects to proposed PCEs 1 (riparian woodlands), 2 (adequate prey base), and 3 (dynamic riverine processes) along 400 feet of stream length, up to 25.81 acres of ROW at the Rio Grande River crossing, and in indirectly affected areas--or approximately 0.0004% of the 61,595-ac of the proposed Middle Rio Grande Critical Habitat Unit (NM-8) and 0.00005% of the 546,335 acres of proposed critical habitat range-wide. Thus, although there is a measurable amount of riparian woodland affected and the amount of large insect prey may decrease proportionately, the effect to proposed critical habitat in this unit and rangewide from the amount of vegetation and prey impacted at each location is so small that the proposed critical habitat would remain functional to serve the intended conservation role for the cuckoo.
- We anticipate minor effects to proposed PCEs 1, 2, and 3 along 400 feet of stream length, up to 11.13 acres of ROW at the San Pedro River crossing, and in indirectly affected areas--or approximately 0.0005% of the proposed Upper San Pedro Critical Habitat Unit (AZ-18) and 0.00002% of the 546,335 acres of proposed critical habitat range-wide. Thus, although there is a measurable impact, the amount of vegetation and prey impacted at each location and rangewide is so small that the proposed critical habitat would remain functional to serve the intended conservation role for the cuckoo.

This conference opinion for the effects of the SunZia Transmission Line on western yellow-billed cuckoo proposed critical habitat is based on the fact that although implementation of the proposed action (including permanent removal of vegetation, effects of vegetation management activities over the life of the project, and possible erosion effects on slightly <37 ac of riparian woodlands) may preclude redevelopment of riparian woodland at the Rio Grande River and San Pedro River crossings, we anticipate adequate riparian woodlands would remain unaffected in upstream and downstream sites. Finally, conservation measures to avoid and minimize greater impacts to proposed critical habitat are integral to the proposed action.

This conference 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 statutory provisions of the Act to complete the above analysis with respect to critical habitat. The conclusions of this conference opinion are based on full implementation of the project as described in the “Description of the Proposed Action” section of this document, including any Conservation Measures that were incorporated into the project design.

### **CONSERVATION RECOMMENDATIONS**

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 BLM work with us, Arizona Game and Fish Department, and New Mexico Department of Game and Fish to participate in recovery planning and implementation of conservation actions for the yellow-billed cuckoo and improve the abundance and quality of riparian woodland habitat.

In order for the FWS to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the FWS requests notification of the implementation of any conservation recommendations.

### **REINITIATION NOTICE**

This concludes the conference opinion for the SunZia Southwest Transmission Line Project for effects on western yellow-billed cuckoo proposed critical habitat. You may ask the FWS to confirm the conference opinion for the western yellow-billed cuckoo proposed critical habitat as a biological opinion issued through formal consultation if critical habitat is designated. The request must be in writing. If the FWS reviews the proposed action and finds there have been no significant changes in the action as planned or in the information used during the conference, the FWS would confirm the conference opinion as the biological opinion for the project and no further section 7 consultation would be necessary.

The FWS appreciates the BLM’s efforts to identify and minimize effects to listed species from this project. We encourage you to coordinate the review of this project with the Arizona Game and Fish Department and the New Mexico Department of Game and Fish. We also appreciate

your ongoing coordination during implementation of this program. In keeping with our trust responsibilities to American Indian Tribes, we are providing copies of this memorandum to the Bureau of Indian Affairs (BIA) and are notifying affected Tribes. For further information please contact Robert Lehman (602) 242-0210 (x217) or Brenda Smith at (928) 556-2157. Please refer to consultation number 02EAAZ00-2013-F-0168 in future correspondence concerning this project.

/s/ Lesley Fitzpatrick for Steven L. Spangle  
cc (hard copy)

New Mexico Department of Game and Fish, Santa Fe, NM  
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## TABLES

<b>Table 1. Supplement. Acreage of Disturbance within Yellow-billed Cuckoo Proposed Critical Habitat.</b>		
	<b>Rio Grande</b>	<b>San Pedro River</b>
<b>Permanent Disturbance</b>		
Road Improvements	1.11	0
Structure Pads	4.78	0.28
<b>Total</b>	<b>5.89</b>	<b>0.28</b>
<b>Vegetation Management</b>		
Wire Zone (90 feet wide per line)	8.97	4.87
Border Zone (110 feet wide per line)	10.95	5.98
<b>Total</b>	<b>19.92</b>	<b>10.85</b>

### FIGURES

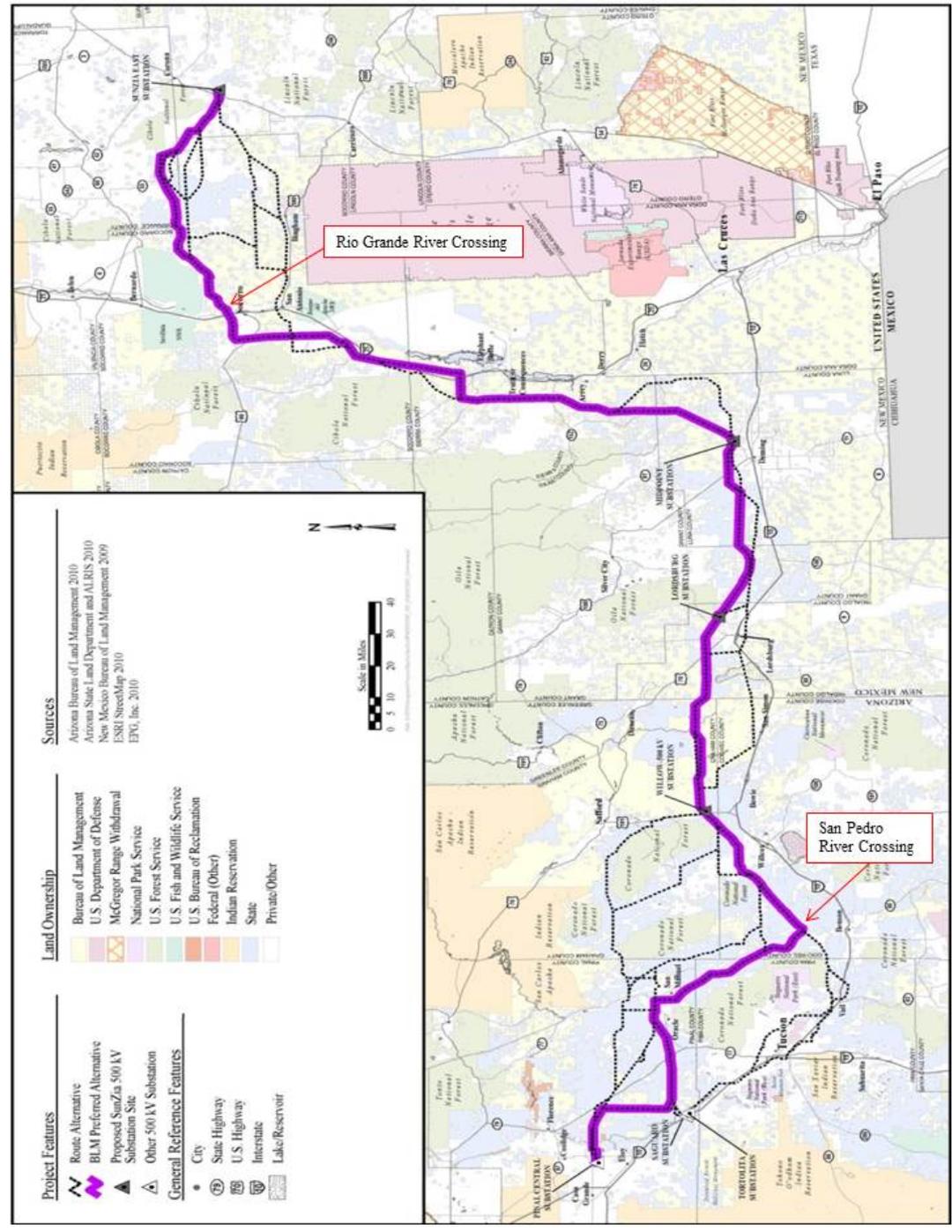


Figure 1. Alternative routes and land ownership with Rio Grande River and San Pedro River crossings shown and the BLM preferred alternative highlighted.

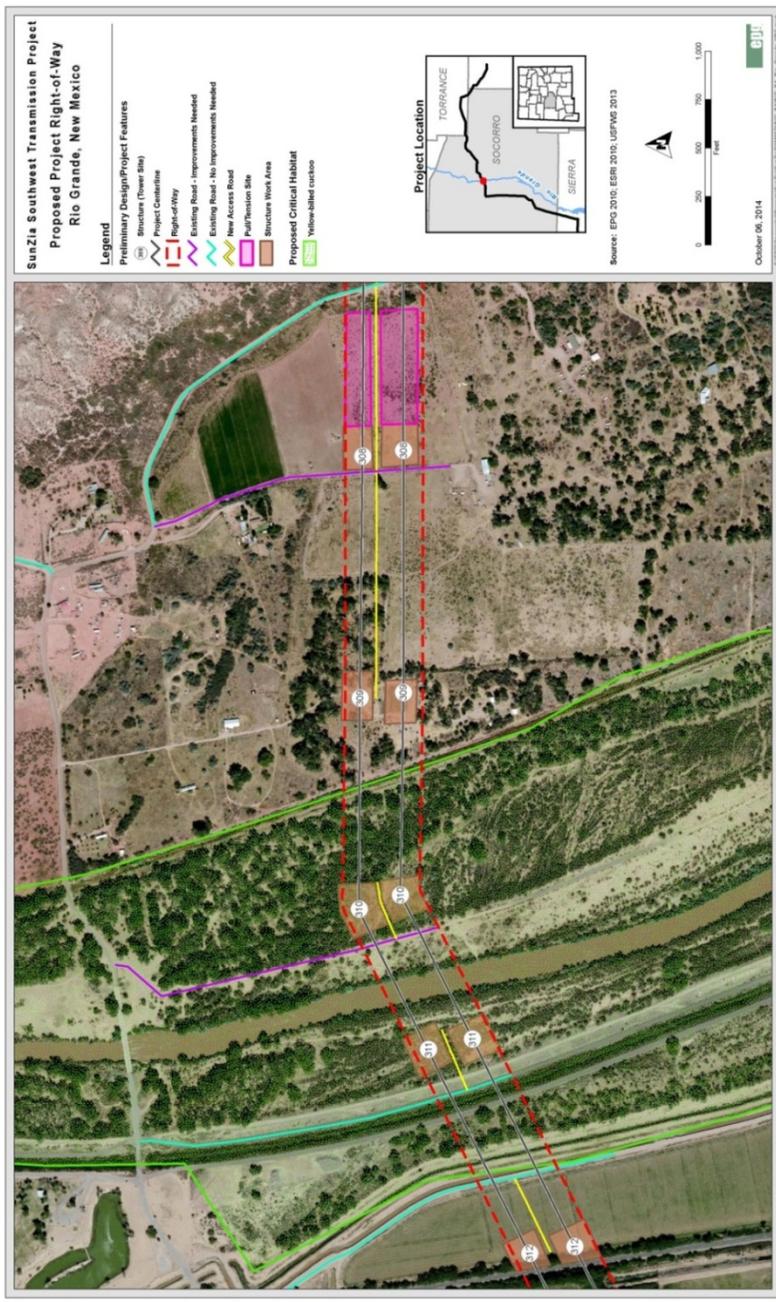


Figure 24. Supplement. Preliminary Engineering and Ground Disturbance within Yellow-billed Cuckoo Proposed Critical Habitat at the Rio Grande.

Figure 2. Preliminary engineering and ground disturbance within western yellow-billed cuckoo proposed critical habitat at the Rio Grande River crossing.

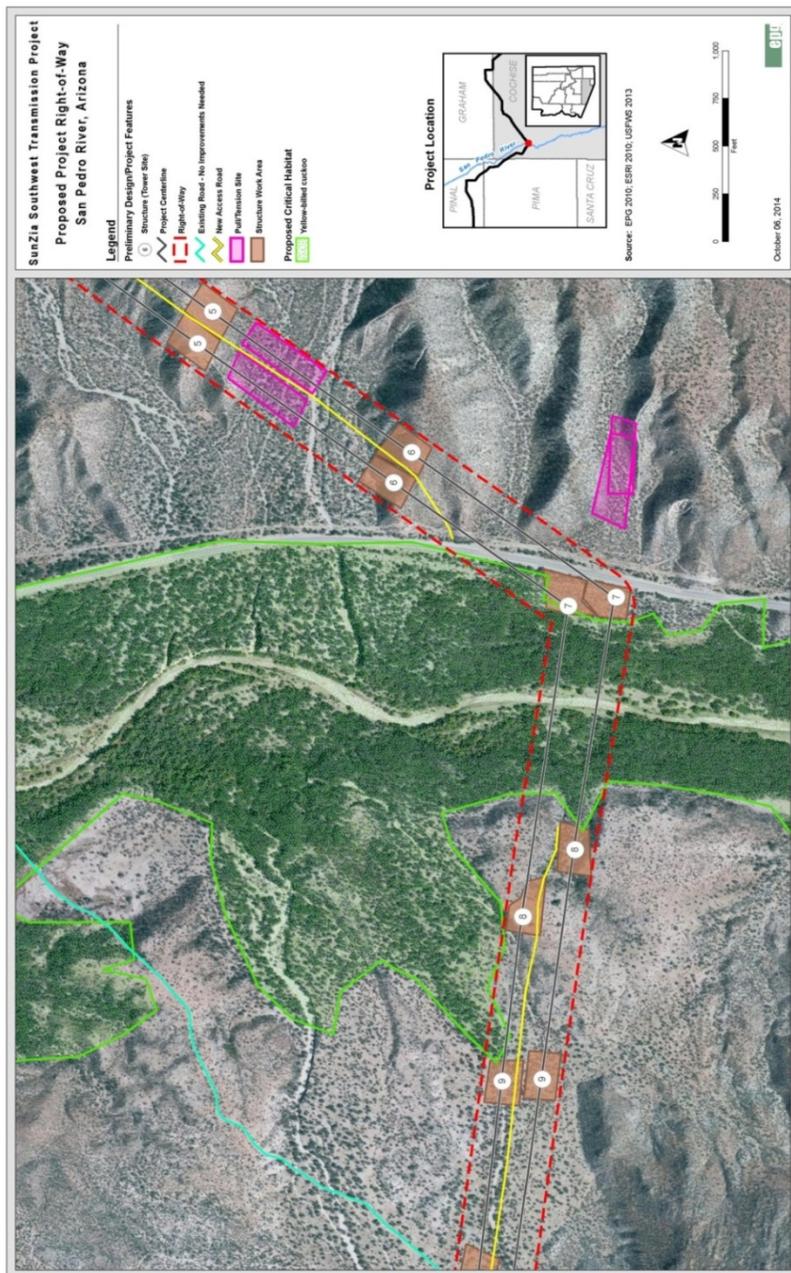


Figure 27. Supplement. Preliminary Engineering and Ground Disturbance within Yellow-billed Cuckoo Proposed Critical Habitat at the San Pedro River.

Figure 3. Preliminary engineering and ground disturbance within western yellow-billed cuckoo proposed critical habitat at the San Pedro River crossing.

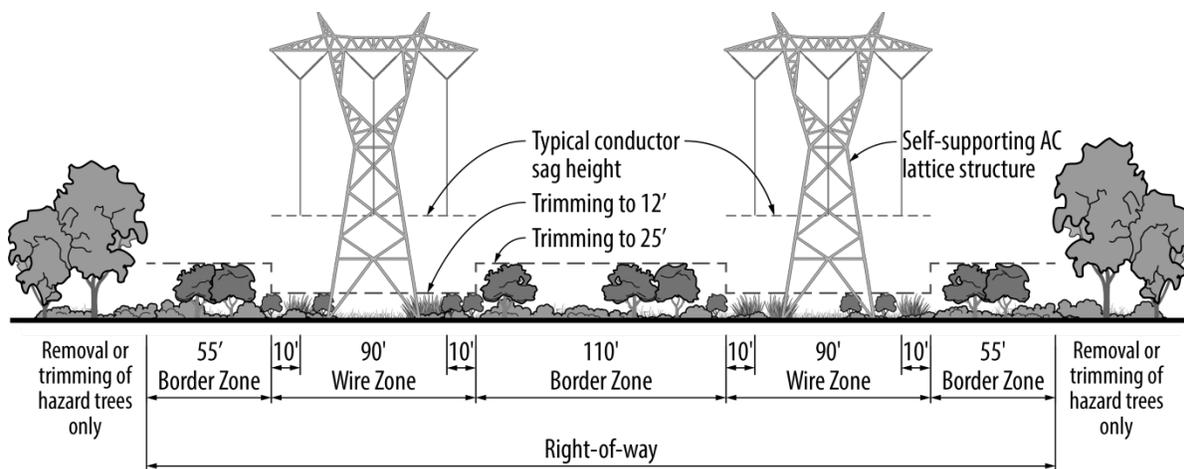


Figure 4. Right-of-way cross-section showing wire zone and border zone configurations and minimum clearances for vegetation management.

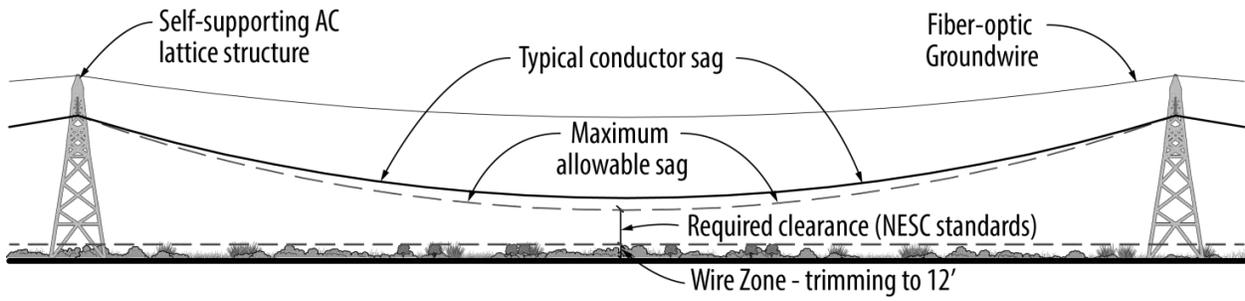


Figure 5. Right-of-way profile showing conductor sag and wire zone vegetation management clearances.