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In Reply Refer To:
AESO/SE
2-21-96-F-197

June 5, 2000

Mr. Lawrence R. Wolfe
Senior Environmental Protection Specialist
Engineering and Environmental Staff
United States Department of Agriculture
Rural Utilities Service
Washington, D.C. 20250-1500

Dear Mr. Wolfe:

This document transmits the U.S. Fish and Wildlife Service's biological opinion (BO) based on our review of the activities proposed by Arizona Electric Power Cooperative, Inc. (AEPSCO), the formally-designated federal representative for Rural Utilities Services (RUS), for vegetation clearing, roadways, and tree trimming at two Gila River transmission line crossings located in Graham County, Arizona, and their effects on the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) (WIFL) and razorback sucker (*Xyrauchen texanus*) and its designated critical habitat in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). AEPSCO's October 25, 1999, biological assessment (BA) was received on November 1, 1999.

The BA lists 18 federally listed and proposed species that may occur in Graham County, Arizona. Of these, nesting southwestern willow flycatchers have been found up- and downstream from this site and the project area supports potential nesting habitat. The Gila River (from the Arizona - New Mexico border to Coolidge Dam, Arizona) is designated critical habitat for the razorback sucker (USFWS 1994).

Because this proposed action will reduce and fragment WIFL habitat in the project area, incidental take may occur as described in the original Service biological opinion (2-21-96-F-197) dated December 4, 1997, page 30, "Amount or Extent of Take". Although the project area has not been documented as being inhabited by nesting WIFL, it supports potentially suitable WIFL habitat, and is likely used by migrating WIFL as shelter, travel and thermal cover, and a corridor to other documented nest sites located up- and downstream.

The original BO required three years of WIFL surveys. AEPSCO arranged for surveys in 1996, 1998, 1999, and 2000. Survey results for 1996, 1998, and 1999 did not detect nesting WIFL in the project area, and surrounding lands were spottily surveyed due to access denial by some

landowners. Results for year 2000 surveys are not yet completed. Arizona Game and Fish Department (AGFD) surveys previously detected nesting WIFL at sites up- and downstream from the project area. In the original BO, as a surrogate measure of take, incidental take would not be exceeded if the reasonable and prudent measures with accompanying terms and conditions are implemented. AEPCO proposes to continue working under the definitions of the original BO.

To begin reinitiation, RUS must review the action, make an effect determination for the affected listed species, and send the request and the effects determination in writing to the Service. Because this is a formal consultation, the reinitiation is also formal. RUS is required to begin this process, even though they have designated a representative (AEPCO) to act as their liaison. This ensures RUS will not be held liable for take of a listed species during the otherwise lawful execution of an action under section 9 of the Act. Your May 15, 2000 request for reinitiation was received on May 24, 2000.

This biological opinion is based on information provided in the October 25, 1999, BA, telephone conversations and electronic communications between AEPCO (Teri McCaulou) and the Service (Thetis Gamberg, Greg Beatty), field investigations, and other sources of information. The references cited in this biological opinion are not a complete list of all available literature on the species of concern, roadbuilding, tree trimming under powerlines and its effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at our Phoenix office.

The Service's biological opinion is that the tree trimming, vegetation clearing, and the roadways at two Gila River sites, as proposed, are not likely to jeopardize the continued existence of the southwestern willow flycatcher, and are not likely to destroy or adversely modify designated critical habitat for the razorback sucker.

Consultation History

In a March 6, 1996, letter to the Service, AEPCO proposed modifications to transmission structures and right-of-way clearing on two lines; the Hackberry to Morenci (L) and the Dos Condados to Hackberry (M) lines. AEPCO requested a species list for the action area. The Service responded and included a list for Greenlee County in a March 12, 1996, letter. AEPCO responded with a request for the species list for Graham County on March 18, 1996, and the Service responded with the list for Graham County on March 19, 1996.

A June 12, 1996 letter from AEPCO explained that they had prepared and submitted a biological assessment to the Army Corps of Engineers (Corps) for the above project, in order to receive an individual section 404 permit. The Corps was the lead federal agency for the section 7 process and the National Environmental Policy Act (NEPA) process. The Corps determined AEPCO's proposed project would occur outside Corps jurisdiction. Because AEPCO would be receiving funding from RUS, AEPCO's letter noted the Corps requested AEPCO take over the lead in the

section 7 process. The Service assigned section 7 consultation number 2-21-96-I-197 to this proposed project.

A letter dated September 24, 1996, and a biological assessment prepared by SWCA, Inc., and dated August 15, 1996, were sent by RUS to the Service. Received by the Service on October 10, 1996, the RUS cover letter noted the BA was prepared regarding the southwestern willow flycatcher, the razorback sucker and its critical habitat, and the cactus ferruginous pygmy-owl. RUS determined that habitat for the razorback sucker and the pygmy-owl did not exist in or on the Gila River at the project area. Surveys (1998, 1999) for willow flycatcher produced negative results. RUS determined their proposed project may affect but was not likely to adversely affect the southwestern willow flycatcher, the razorback sucker or its critical habitat, or the cactus ferruginous pygmy-owl.

After further discussions between AEPCO (Teri McCaulou) and the Service (Greg Beatty, Thetis Gamberg), minimization measures for southwestern willow flycatcher and razorback sucker were discussed and agreed upon for the proposed tree trimming, vegetation clearing and roadways project.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The AEPCO BA addresses right-of-way (ROW) vegetation clearing and tree trimming activities associated with tower maintenance at their two transmission lines that cross the Gila River near Safford, located in Graham County, southcentral Arizona. The vegetation clearing was required so AEPCO could put in narrow roadways under the transmission lines to access trees with their bucket truck for their trimming needs. Maintenance of these lines has already been consulted on in the original Service BO (2-21-96-F-197) dated December 4, 1997. The BO is included in this reinitiation by reference.

Changes from original BO

AEPCO proposes to increase the original buffer distance (16 feet) between the transmission lines and the tops of vegetation and trees to 18 feet. This would necessitate increased tree and vegetation trimming. AEPCO also proposes to create two narrow roadways, one (each) located directly under their transmission lines, to aid in tree trimming access by their bucket truck and worker safety during trimming activities. Discussions between AEPCO and the Service resulted in agreement about concerns of further habitat fragmentation and alteration of potential nesting habitat structure.

The L lines (L121, L122, and L123): Hackberry-Morenci

The L lines are strung above suitable WIFL habitat. Suitable WIFL nesting habitat and documented nesting pairs occur at nearby sites located up- and downstream from this line. Vegetation at tower L123 was recently (1999) cut lower than was recommended and agreed upon in the original BO. A small patch of WIFL habitat now exists underneath this line. AEPCO proposes to hand-trim these trees and vegetation. Clearing is not to be conducted here.

A fire occurred (Service emergency fire consultation 2-21-99-I-249) in September 1999, in a driftwood field located between towers L121 and L122. AEPCO proposes to construct a narrow (truck-width only) roadway under this portion of line for their bucket truck to access the tall trees for trimming. The roadway will be established between the middle and southernmost wires, keeping impacts farther away from the edge of the river. This will reduce future habitat fragmentation and allow AEPCO to trim trees that might grow up on the river side of this road (under the northernmost wires). This fire burned many mature trees and the area will take many years to rehabilitate into its former state. This particular spot was likely not prime WIFL nesting habitat, but was suitable dispersal habitat, and shows the possibility of growing into suitable nesting habitat over time.

Critical habitat for razorback sucker in Arizona is designated along 617 stream miles of river (USFWS 1993). The river migrates within its 100-year floodplain often over time, and flows into the lower areas (which are bare of vegetation) most of the time; the vegetated areas that occur a little higher up in the floodplain are only inundated during very high flows. It is very unlikely that razorback sucker use the vegetated areas, as they experience flooding only during years of exceptionally high water levels.

Sedimentation is the major concern for this species in this area. Ash still remains deep at the burn site. Sheet flow after rains could wash some ash (increased sediments) into the river. Some clearing activities (which remove vegetation) may produce more loose dirt that may be washed in to the river in the future monsoons. Hay bales will be placed along the instream side of the access road that will be created under the powerline between towers L121 and L122 to help trap sediments and ash in any runoff toward the river. This is aided by the dry spring Arizona has experienced this year. AEPCO will not push soil or ash from their roadclearing operation toward the river; it will be spread in the upper part of the disturbed floodplain. Vegetation in the fire area has low-growth seep willow returning on its own, and due to the underlying soil base and proximity to water, this area is very likely to rehabilitate quickly and successfully. Effects to critical habitat of razorback sucker along this small portion of the river are considered to be temporary, insignificant, and discountable.

Existing vegetation under the lines between towers L122 and L123 has the highest potential to develop into suitable WIFL nesting habitat. Two long rows of cottonwood and willow are establishing themselves in (currently) dry channels that flowed this last monsoon season (Beatty 1999). This area has high potential to continue to mature into suitable WIFL nesting habitat. Where the lines leave tower L122 and travel north, some clearing and trimming was conducted to aid fire suppression efforts at the time of the September 1999 fire. In this short stretch (20 yards)

to where the bank drops down to the river, trees can be trimmed or removed to the width of the road located underneath (not alongside) the wires and the surrounding trees can be trimmed by a bucket truck.

There will be no roads leading to the floodplain. Habitat that exists in the riverbottom shows the best chance of providing WIFL nesting habitat in the near (20 year) future. Hand trimming of the lines here is important to keeping the integrity of the area and not allowing habitat fragmentation to occur as it would should a road be established.

AEPCO proposes to build and lock gates on their right-of-way roads leading into this area. If a private landowner requires use of the ROW road, AEPCO will discuss and resolve those needs with the landowner. A partial fence line leading from each side of the roadway gate down into the adjacent canal (on the south side) and steep riverbank (on the north side), would aid in preventing unauthorized trespass into a sensitive WIFL habitat area. The gate and fence line would be posted against unauthorized entry. These steep slopes are not negotiable by vehicle.

The M line (M24, M25, and M26): Dos Condados-Hackberry

AEPCO has established roads under the M lines (see map in BA). A bucket truck will be used for trimming trees, and little vegetation of any kind exists here. AEPCO proposes to maintain the existing roads, to not create any more roads, and use a bucket truck or hand trim under these lines.

Effects Summary

Effects to the species and habitat, as previously analyzed in the original BO (2-21-96-F-197), dated December 14, 1997, are anticipated to remain essentially the same. The additional two feet of vegetation clearing authorized will occur along the top edges of currently-trimmed vegetation and will only marginally add to the total increase of removed habitat. WIFL use the interior of their preferred habitat for nesting, thermal cover, and other activities, and additional loss of the tops of their habitat will be very small compared to the remainder of appropriate vegetation. The line trimming will not remove canopy, only lessen the height of some vegetation that may occur directly under the lines. All construction and clearing actions will continue to take place from September 1 and April 15, annually, which is outside the WIFL breeding season. Noise and dust from these actions are not expected to affect the species; therefore, the proposed project as modified herein, is not likely to jeopardize the continued existence of the WIFL.

REINITIATION - CLOSING STATEMENT

This concludes formal consultation on the actions outlined in your reinitiation request. The original biological opinion remains in effect, except for the parts replaced by this reinitiation. 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 retained (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 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 the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The Service appreciates the efforts of RUS and AEPCO on behalf of threatened and endangered species and their habitats under your jurisdiction. Please contact Thetis Gamberg (520/670-4619) or Sherry Barrett (520/670-4617) of my Tucson staff with any questions or concerns. Please refer to consultation number 2-21-96-F-197 in future correspondence concerning this project.

Sincerely,

/s/ David L. Harlow
Field Supervisor

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES; Steve Chambers)
Greg Beatty/Lesley Fitzpatrick, Fish and Wildlife Service, Phoenix AZ
John Kennedy, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ
Teri McCaulou, AEPCO, Benson, AZ

REFERENCES CITED

USFWS. 1991. Endangered and threatened wildlife and plants: razorback sucker (*Xyrauchen texanus*) determined to be an endangered species. October 23, 1991. Federal Register 56(205):54957-54967.

USFWS 1994. Endangered and threatened wildlife and plants: final rule determination of critical habitat for the Colorado River endangered fishes: razorback sucker, Colorado squawfish, humpback chub, and bonytail chub. March 21, 1994. Federal Register 59(54):13374-13400.

USFWS 1995. Endangered and threatened wildlife and plants: final rule determining endangered status of the southwestern willow flycatcher. February 27, 1995. Federal Register 60(38): 10694-10715.

USFWS 1997. Endangered and threatened wildlife and plants: final determination of critical habitat for the southwestern willow flycatcher. July 22, 1997. Federal Register 62(140): 39129-39147.