

APPENDIX P

USFWS Letter of Concurrence with Findings of the RGCP Biological Assessment



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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June 28, 2004

Cons. # 2-22-00-I-025

Sylvia A. Waggoner, Division Engineer
U.S. International Boundary and Water Commission
Environmental Management Division
The Commons, Building C, Suite 310
4171 N. Mesa Street
El Paso, Texas 79902

Dear Ms. Waggoner:

Thank you for your February 11, 2004, letter requesting consultation pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*). This consultation concerns the effects of the Integrated U.S. International Boundary and Water Commission (USIBWC) Land Management Alternative (proposed action) on the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher), threatened bald eagle (*Haliaeetus leucocephalus*) and endangered interior least tern (*Sterna antillarum*) (least tern). Supplemental information for the proposed action was received by the U.S. Fish and Wildlife Service (Service) on May 14 and June 15 and 24, 2004.

The USIBWC proposes to implement the 20-year proposed action to improve the flood-control capacity of the RGCP and improve its ecosystem. Flood-control improvements would include: 1) Raising the height of 60.1 miles of levees by 2 feet, 2) constructing a 2.8-mile floodwall near Canutillo, 3) constructing 6 miles of new levees, and 4) reinforcing 3.2 miles of levees with riprap.

Measures would also be implemented to control erosion associated with the operation and maintenance of the RGCP. Measures would include the implementation of erosion-control best management practices, including modified mowing practices, modified floodway grading practices, mulching and seeding of disturbed areas, and the use of hay bales, silt fences and other erosion control measures.

The proposed action would also incorporate management actions to improve riparian and grassland habitat in the project area. These actions would include site preparation such as invasive weed control, disking, and salinity management to create suitable seed/planting beds for native vegetation. Pole plantings and seeding would be used to reintroduce native species back to the disturbed environments. To ensure that native species successfully reestablish, a monitoring and maintenance plan would be developed and implemented.

The proposed action would also include bank shakedown in specific areas to facilitate overbank flows and reestablish natural river processes critical to the regeneration of native vegetation such as willow and cottonwood. Prior to constructing the shakedown, the USIBWC would coordinate with the Service's New Mexico Ecological Services Field Office (NMESFO) to identify areas where functional, regenerating native riparian habitats could be restored and/or enhanced to provide suitable habitats for desired native flora and fauna. Restoration and enhancement areas would be monitored and maintained to ensure that they are suitable for native plants and wildlife.

Suitable habitats for the bald eagle, least tern, the threatened piping plover (*Charadrius melodus*), and flycatcher occur within the action area of RGCP. The USIBWC has determined that the piping plover would not be affected by the project because of its migrant status and because it was not identified during surveys of the project area. The flycatcher has been detected adjacent to the RGCP right-of-way during surveys in the Seldon Canyon area, which is within the action area of this project.

The NMESFO concurs with the USIBWC's determination of "may affect, not likely to adversely affect" the flycatcher for the proposed action. Our concurrence is based on the following understanding of your proposed action:

- Disturbance of individuals or nests, predation, or parasitism would not be likely because livestock use would not occur in occupied habitat during any time of the year.
- Suitability for nesting flycatchers would not be reduced because livestock grazing in unoccupied suitable habitat would not occur during the growing season (key vegetation characteristics are maintained or enhanced and conditions promoting cowbird parasitism are avoided).
- Cowbird parasitism would be unlikely because grazing would occur greater than 5 miles from occupied habitat during the breeding season,
 - or -
 - Monitoring of flycatcher nests would demonstrate that no cowbird parasitism is occurring when livestock use occurs closer than 5 miles, but not within, occupied habitat.
 - or -
 - Cowbird parasitism would be unlikely due to the physical juxtapositions of habitat type, terrain, facilities, elevation, and other factors.
- Progression of potential habitat towards becoming suitable within 10 years would not be impeded by livestock grazing (e.g., regeneration or maintenance of woody vegetation is not impaired by trampling, bedding, or feeding).

- Sufficient monitoring is in place to demonstrate that habitat suitability is being maintained or enhanced in accordance with the second and fourth bullets. Such monitoring would continue through the life of the grazing action under consideration.
- Vegetation treatments would occur outside the portion of the flycatcher nesting season that extends from May through July. The entire nesting season extends from April 15 through August. If treatments are necessary within this nesting season, flycatcher surveys would be conducted and active nests would be identified and avoided.
- Minimum impact vegetation treatments would be implemented to minimize or avoid impacts to flycatchers and their habitats.
- At least one acre of native riparian vegetation would be established in the general project area for each acre of potentially suitable flycatcher habitat disturbed during project implementation. This would include areas disturbed by levee reconstruction and reinforcement, floodway maintenance and mowing, and invasive weed control activities, among other projects, when it removes potentially suitable flycatcher habitat. Cottonwood and willow plantings would occur during the appropriate season and under appropriate soil moisture conditions. A monitoring and maintenance plan would be developed and implemented to ensure suitable habitat develops for native flora and fauna. The NMESFO would receive annual reports on this plan.

Bald eagles are known to be present along the Rio Grande and have been documented in the project area. Adult and juvenile birds may be present in the area between late November and early March. Although not identified during the 2000 and 2001 surveys, they were observed in the project area during a January 1999 survey.

The NMESFO concurs with the USIBWC's determination of "may affect, not likely to adversely affect" the bald eagle, for the proposed action. Our concurrence is based on the following understanding of your proposed project:

- No potential bald eagle winter roosting trees would be disturbed during construction.
- Presence/absence of bald eagles would be monitored during construction in the fall and winter.
- If a bald eagle is present within 0.25 mile of the project area in the morning before project activity begins, or arrives during breaks in project activity, the contractor would be required to suspend all activity until the bird leaves of its own volition; or a USIBWC biologist, in consultation with the NMESFO, determines that the potential for harassment is minimal.

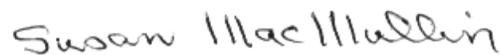
- If bald eagles are consistently found in the immediate project area during the construction period, the USIBWC would contact the NMESFO to determine if formal consultation under the Endangered Species Act is necessary.

The NMESFO concurs with the USIBWC's determination of "may affect, not likely to adversely affect" the least tern for the proposed action. Our concurrence is based on the migratory status of this species in the action area and that no known nesting habitat is available.

Please contact Lyle Lewis, Endangered Species Branch Chief for the NMESFO, at (505) 761-4714 by July 15, 2004, to initiate coordination with this office on the restoration and enhancement of native riparian habitats. Please also contact the NMESFO to verify that the above determinations and concurrences are still valid if: 1) future surveys detect listed or proposed species in habitats where they have not been previously observed; 2) the project is changed or new information reveals effects of the actions to the listed species or their habitats to an extent not considered in this evaluation; or 3) a new species is listed that may be affected by this project. Section 7 consultation for individual projects may be necessary during project planning if circumstances are different from those described above.

This concludes section 7 consultation on the proposed action. The NMESFO appreciates the information provided by the USIBWC in preparing this evaluation. We also appreciate your commitment to avoid adverse effects to listed species and your efforts to improve fish and wildlife habitat. In future communications regarding this letter or the proposed project, please refer to Consultation #2-22-00-I-025. If you have any questions concerning this letter, please contact Dr. Patricia Zenone of my staff at (505) 761-4718.

Sincerely,



Susan MacMullin
Field Supervisor

cc:

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico
Director, New Mexico Energy, Minerals, and Natural Resources Department, Forestry
and Resources Conservation Division, Santa Fe, New Mexico