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| REVIEW OF NEW SPECIFICATION OR SPECIFICATION CHANGE  | **Log No.**  240-2A |
| **Specification Section No.:** 240 | **Item:** Protection of Migratory Birds |
| **Originating Office:** Landscaping/Environmental | **By:** Banovich |
| **Date Sent For Review:** November 19, 2010 | **Date Comments Due: December 17, 2010** |
| Please submit response to: STANDARDS AND SPECIFICATIONS UNIT, ROOM 290, HEADQUARTERS, DENVER |
| **Reviewer** | **Concurrent Reviews – Others Commenting** | The attached Draft Specification is submitted for your review and comments. If not returned by Date Comments Due, the draft specification will be considered to be approved unless the Specification Unit of Staff Design [(303) 757-9474, (303) 757-9402] is advised otherwise.**REMARKS:** If these proposed modifications are approved, it will result in the issuance of a new Project Special Worksheet. |
|  | **Spec Committee Members:** |  |
|  | Chairman: Wassenaar | X |
|  | Region 1: Cox | **X** |
|  | Region 2: Burch | **X** |
|  | Region 3: Alexander | **X** |
|  | Region 4: Frieler | **X** |
|  | Region 5: Beller | **X** |
|  | Region 6: Koenig | **X** |
|  | Project Development: Lacey | **X** |
|  | Specifications: Brinck | **X** |
|  | Bridge: Hasan | **X** |
|  | Agreements:  | **X** |
|  | Materials: Zufall | **X** |
|  | Traffic Engineering: Matthews | **X** | REVIEWER COMMENTS:( ) Approved ( ) Disapproved ( ) ModifiedIf disapproved or modified, give reason why and show any modifications on the attached draft copy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_ Name/Signature Date |
|  | Maintenance: Mueller | **X** |
|  | FHWA: Urban | **X** |
|  | Attorney General: Spear | **X** |
|  | Attorney General: Morrow | **X** |
|  |  |  |
|  | **Others:** |  |
|  | Colorado Contractors Assoc.: Moody | **X** |
|  |  |  |
|  | **Technical Committees:** |  |
|  | Bridge |  |
|  | Culvert |  |
|  | Joint Co-op, CCA/CDOT |  |

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| **COLORADO DEPARTMENT OF TRANSPORTATION****SUBMITTAL OF NEW SPECIFICATION OR SPECIFICATION CHANGE** | Log No. (Assigned by Standards and Specifications Unit)240-2A |
| TO: Standards and Specifications Unit, Project Development, Suite 290 | FROM:Mike Banovich, EBP, DTD(Region, Branch or Technical Committee) |
| SPECIFICATION SECTION NO.240 | ITEMProtection of Migratory Birds | Priority Routine[x]  Fast[ ]  |
| Reason for this new or changed specification:These proposed special provisions create a new Specification Section 240- Protection of Migratory Birds. Section 240 will address the requirements of the Migratory Bird Treaty Act (1918). It will ensure that consistent, appropriate and reasonable measures are taken to prevent injury to and death of migratory birds and that CDOT activities are compatible with current federal and state wildlife laws and regulations.The Environmental Advisory Committee (EAC) and the Specifications Unit has incorporated comments from PDAC, RPEMS and USFW agency to fulfill necessary provisions to protect migratory birds during construction.A pay item has been created to measure and pay for Item 240- Wildlife Biologist, Unit Hour. |
| New or Revised Specification:See 3 attached project special provision work sheets for use on the appropriate type of project.  |
| Note: See Procedural Directive 513.1 for a description of appropriate specification development procedures. |

 **CDOT Form 1215 10/01**

**SPECIAL PROVISION FOR PROJECTS INVOLVING**

**PRIMARILY CONSTRUCTION OF STRUCTURES OR REPAIR OF STRUCTURES:**

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SECTION 240

PROTECTION OF MIGRATORY BIRDS

Section 240 is hereby added to the Standard Specifications for this project as follows:

**DESCRIPTION**

**240.01** This work consists of protecting migratory birds during construction work on structures.

**MATERIALS AND CONSTRUCTION REQUIREMENTS**

**240.02 Work On Structures**. The Contractor shall prosecute work on structures in a manner that does not result in a taking of migratory birds protected by the Migratory Bird Treaty Act (MBTA). The Contractor shall not prosecute the work on structures during the primary breeding season, April 1 through August 31, unless he takes the following actions:

1. The Contractor shall remove existing nests prior to April 1. If the Contract is not awarded prior to April 1 and CDOT has removed existing nests,then the monitoring of nest building shall become the Contractor’s responsibility upon Notice to Proceed.
2. During the time that the birds are trying to build or occupy their nests, between April 1 and August 31, the Contractor shall monitor the structures at least once every three days for any nesting activity.
3. If the birds have started to build any nests, the nests shall be removed before the they are completed. Water shall not be used to remove the nests.
4. Netting or another approved method to prevent nest construction at a site is acceptable. The netting shall be monitored and repaired or replaced as needed. Netting shall consist of a mesh with openings that are ¾ inch or less in diameter.

If active nests become established, i.e., there are eggs or young in the nests, all work that could result in abandonment or destruction of the nests shall be avoided until the young have fledged or the nest is unoccupied as determined by the wildlife biologist and approved by the Engineer. The Contractor shall prevent construction activity from displacing birds after they have laid their eggs and before the young have fledged.

If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, the Contractor shall remove and properly dispose of any netting used on the structure.

**240.03 Taking of a Migratory Bird.** The taking of a migratory bird shall be reported to the Engineer. The Contractor shall be responsible for all penalties levied by the U. S. Fish and Wildlife Service (USFWS) for the taking of a migratory bird.

**METHOD OF MEASUREMENT**

**240.04** Removal of nests will be measured by the actual number of man-hours spent removing inactive nests just prior to and during the breeding season, April 1 through August 31. During this period, the Contractor shall submit to the Engineer each week for approval a list of the workers who removed nests and the number of hours each one spent removing nests

Netting will be measured by the square yard of material placed to keep birds from nesting on the structure. The square yards will be calculated using the length of netting measured where it is attached to the ground and the average height of the netting where it is attached to the structure. Overlaps will not be measured

**BASIS OF PAYMENT**

**240.05** The accepted quantities measured as provided above will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

**Pay Item Pay Unit**

Removal of Nests Hour

Netting Square Yard

Payment for Removal of Nest will be full compensation for all work and material required to complete the work.

Payment for netting will be full compensation for all work and material required to complete the item. Overlaps of netting will not be measured and paid for separately, but shall be included in the work. Maintenance and replacement of netting will not be measured and paid for separately, but shall be included in the work.

Removal and disposal of netting will not be measured and paid for separately, but shall be included in the work.