



U.S. Department
of Transportation
**Federal Highway
Administration**

Colorado Division

January 9, 2012

12300 W. Dakota Ave., Ste. 180
Lakewood, Colorado 80228
720-963-3000
720-963-3001

Ms. Susan Linner
US Fish and Wildlife Service
P.O. Pox 25486, DFC (MS 65412)
Denver, Colorado 80225
Attn: Alison Michael

**RE: Federal-Aid Highway Program in Colorado
Template Biological Assessment & Request for Formal Section 7 Consultation**

Dear Ms. Linner:

This letter contains the Biological Assessment addressing potential impacts from implementation of the Federal-Aid Highway Program (FAHP) in Colorado (“Project”) on federally-listed species in Nebraska. With this submission, we are requesting initiation of formal consultation under Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)(ESA), concerning the Whooping Crane (*Grus americana*), interior population of the Least Tern (*Sternula antillarum*), northern Great Plains population of the Piping Plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*) (collectively referred to as the “target species”), and designated critical habitat of the Whooping Crane. We further request the initiation of formal consultation for the western prairie fringed orchid (*Platanthera praeclara*). We have determined that the Project is not likely to adversely affect the American burying beetle (*Nicrophorus americanus*) and will have no effect on the Eskimo Curlew (*Numenius borealis*).

The FAHP began with the Federal-Aid Road Act of 1916 and the Federal Highway Act of 1921. These acts provided the foundation for the FAHP as it exists today. The FAHP has been continued or renewed through the passage of multi-year authorization acts ever since then. Federal funding is provided to assist states in providing transportation services. By law, the nature and the majority of these federal programs is in the form of federal assistance for state administered programs. The Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT) share the responsibility for oversight of the FAHP in Colorado, including all programs and projects using Federal-aid funds, and FHWA provides approval for expenditure of federal funds on those programs and projects. CDOT’s statewide highway construction program is a little more than \$1 billion per year, and FHWA provides approximate 45% of that funding. The FAHP includes such construction activities as rehabilitation and reconstruction existing roadways and bridges, and occasionally the construction of new roadways, but does not include highway maintenance activities. The location of individual projects varies from year to year, but are spread throughout the South Platte River basin. CDOT has broken the state into engineering regions for management purposes; the South Platte River basin encompasses all of Regions 4 and 6, a large portion of Region 1, and a small portion of Region 2 (see attached figure). The portion of Colorado’s FAHP within the South Platte River basin will be referred to collectively as the “Project” for the remainder of this letter. The Project consists of numerous individual highway construction projects throughout

the basin. The Project includes the construction of portions of large-scale, long-term projects that have recently completed the NEPA process, including the US 36 corridor, the North I-25 corridor, and the I-70 Mountain Corridor (for those portions that are within the South Platte River basin). The Project specifically excludes highway construction projects that are 100% locally funded, even if those projects require an FHWA approval (such as an Interstate Access Request); formal consultation for those projects will be handled on a project-by-project basis. The Project also specifically excludes highway construction projects that are within the North Platte River basin.

The Project will result in some amount of continuing historic and/or new depletions to the South Platte River associated with mixing of concrete, compaction of road base, and dust suppression for highway construction projects. In general, water for these actions is obtained from municipal sources throughout the basin, although occasionally water is taken directly from waterways. Although there may be some minor amounts of water that are obtained outside the basin for use within the basin, or vice versa, it is assumed that these amounts would offset each other. For estimating purposes it was assumed that projects inside the basin use water from within the basin, and projects outside the basin do not use basin water. Based on information from 2007-2011, the Project resulted in between 158 and 206 acre-feet of water use per year from the South Platte River basin, with an average use of 176 acre-feet¹. As the Project consists of an on-going program of construction projects, it is anticipated that water use will remain approximate the same at 176 acre-feet per year for the remainder of the consultation increment (i.e. through 2019). The total water usage for the years 2012 through 2019 would be 1,408 acre-feet.

The Platte River Recovery Implementation Program (Program), established in 2006, is implementing actions designed to assist in the conservation and recovery of the target species and their associated habitats along the central and lower Platte River in Nebraska through a basin-wide cooperative approach agreed to by the States of Colorado, Nebraska, and Wyoming and the U.S. Department of the Interior [Program, I.A.1.]. The Program addresses the adverse impacts of existing and certain new water related activities on the Platte target species and associated habitats, and provides ESA compliance² for effects to the target species and designated critical habitat for the Whooping Crane from such activities including avoidance of any prohibited take of such species. [Program, I.A.2 & footnote 2.]. The State of Colorado is in compliance with its obligations under the Program.

For Federal actions and projects participating in the Program, the Platte River Recovery Implementation Program Final Environmental Impact Statement (FEIS) and the June 16, 2006 programmatic biological opinion (PBO) serve as the description of the environmental baseline and environmental consequences for the effects of the Federal actions on the listed target species,

¹ This calculation was based on those construction activities that use the most water: embankment, structure backfill, aggregate base source (ABC) compaction, and concrete (including concrete slope paving, and concrete sidewalks), Using the amounts of each of these activities that were paid for in the year and within the basin, a conversion factor was applied (based on best engineering judgment) to determine the amount of water consumed by each activity, and an additional 20% was added to account for water uses on construction sites that are not directly attributable to pay items.

² "ESA Compliance" means: (1) serving as the reasonable and prudent alternative to offset the effects of water-related activities that FWS found were likely to cause jeopardy to one or more of the target species or to adversely modify critical habitat before the Program was in place; (2) providing offsetting measures to avoid the likelihood of jeopardy to one or more of the target species or adverse modification of critical habitat in the Platte River basin for new or existing water-related activities evaluated under the ESA after the Program was in place; and (3) avoiding any prohibited take of target species in the Platte River basin.

Whooping Crane designated critical habitat, and other listed species in the central and lower Platte River addressed in the PBO. These documents are hereby incorporated into this Biological Assessment by this reference.

Table II-1 of the PBO (pages 21-23) contains a list of species and designated critical habitat in the action area, their status, and the Service's determination of the effects of the Federal action analyzed in the PBO. The Service determined in the PBO that the continued operation of existing and certain new water-related activities may adversely affect but would not likely jeopardize the continued existence of the endangered Whooping Crane, interior population of the Least Tern, and pallid sturgeon, or the threatened northern Great Plains population of the Piping Plover. Further, the Service found that the continued operation of existing and certain new water-related activities may adversely affect but would not likely jeopardize the threatened Bald Eagle and western prairie fringed orchid associated with the central and lower reaches of the Platte River in Nebraska, and was not likely to destroy or adversely modify designated critical habitat for the Whooping Crane. The bald eagle was subsequently removed from the federal endangered species list on August 8, 2007.

The Service also determined that the PBO Federal Action would have no effect to the endangered Eskimo Curlew. There has not been a confirmed sighting since 1926 and this species is believed to be extirpated in Nebraska. Lastly, the Service determined that the PBO Federal Action, including the continued operation of existing and certain new water-related activities, was not likely to adversely affect the endangered American burying beetle.

The above-described Project operations qualify as a "new water related activity because such operations constitute a new surface water or hydrologically connected groundwater activity which may affect the quantity or timing of water reaching the associated habitats of the target species implemented after July 1, 1997 [Program, I.A. footnote 3]. The Project conforms to the following criteria in Section H of Colorado's Plan for Future Depletions [Program, Attachment 5, Section 9]:

1. The Project is operated on behalf of Colorado water users;
2. The Project does not involve construction of a major on-stream reservoir located on the mainstem of the South Platte River anywhere downstream of Denver, Colorado;
3. The Project is not a hydropower diversion/return project diverting water including sediments from the mainstem of the South Platte River anywhere downstream of Denver and returning clear water to the South Platte River.
4. The Project does not cause the average annual water supply to serve Colorado's population increase from "Wastewater Exchange/Reuse" and "Native South Platte Flows" to exceed 98,010 acre feet during the February-July period.

Accordingly, the impacts of this activity to the target species, Whooping Crane critical habitat, and other listed species in the central and lower Platte River addressed in the PBO are covered and offset by operation of Colorado's Future Depletions Plan as part of the Program.

CDOT intends to rely on the provisions of the Program to provide ESA compliance for potential impacts to the target species and Whooping Crane critical habitat. FHWA intends to require, as a condition of any approval, that CDOT fulfill the responsibilities required of Program participants in Colorado, which includes participation in the South Platte Water Related Activities Program, Inc. (SPWRAP). CDOT, as part of the State of Colorado, is currently a member of SPWRAP. FHWA also intends to retain discretionary Federal authority for the FAHP, consistent with applicable regulations and Program provisions, in case reinitiation of Section 7 consultation is required.

In order to track the Project's on-going use of water, FHWA and CDOT intend to report by February 1 each year to the US Fish and Wildlife Service on the previous year's water use based on the same calculation method used for developing the estimated water use for the years 2007-2011. In addition, this report will include a total of water use beginning in 2012 and compare that to the amount consulted on in this letter (1,408 acre-feet in total). If it trend develops that indicates that the Project will exceed 1,408 acre-feet before the end of 2019, FHWA will reinitiate Section 7 consultation.

This letter addresses consultation on all listed species and designated critical habitat, including the referenced Platte River target species and Whooping Crane critical habitat. Potential impacts from construction and operation of the Project to any other federally-listed threatened or endangered species and designated critical habitats will be addressed within the applicable biological opinion prepared by the Service, in accordance with the ESA.

If you have further questions regarding this matter, please contact Ms. Stephanie Gibson, of this office, at 720-963-3013.

Sincerely yours,

John M. Cater
Division Administrator

cc: Stephanie Gibson, FHWA
Jane Hann, CDOT
Jeff Peterson, CDOT
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