



# United States Department of the Interior



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**AUG 13 2013**

## Memorandum

To: Michael P. Collins, Area Manager, U.S. Bureau of Reclamation  
(Reclamation), Eastern Colorado Area Office, Loveland, Colorado

From: Susan Linner, Field Supervisor, Colorado Ecological Services Office  
U.S. Fish and Wildlife Service (Service), Region 6, Denver, Colorado

Subject: Informal Section 7 Consultation for the Arkansas Valley Conduit (AVC),  
Fryingpan-Arkansas Project, Colorado

The U.S. Fish and Wildlife Service (Service) received your letter dated June 28, 2013, initiating informal consultation on the proposed AVC project in Bent County, Colorado. These comments have been prepared under the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4327), the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668 et. seq.), and the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et. seq.).

In your June 28, 2013, letter, you provided us with a description of the AVC project and requested concurrence that the proposed project is not likely to adversely affect the federally endangered interior least tern (*Sterna antillarum*) and the threatened northern Great Plains population of the piping plover (*Charadrius melodus*), and is not likely to jeopardize the continued existence of the proposed, threatened lesser prairie-chicken (*Tympanuchus pallidicinctus*) in Colorado. Reclamation is proposing three federal actions associated with the AVC project: construction, operation, and repayment of the AVC; entering into a conveyance contract for use of the Interconnect to be constructed as part of the AVC; and entering into a Master Contract with the Southeastern Colorado Water Conservancy District to store water in Pueblo Reservoir. The Interconnect is an engineering feature of the AVC and would be constructed and operated only if AVC was constructed.

For the purposes of this consultation, Reclamation defined the action area to include: the Arkansas River and its watershed downstream to, and including, John Martin Reservoir; the Fryingpan River from its headwaters downstream to the Roaring Fork River; the Roaring Fork

River from the Fryingpan River downstream to the Colorado River; and the Colorado River from the Roaring Fork River downstream to the Gunnison River.

Your June 28, 2013, letter stated that potential effects of the proposed actions on terns and plovers would largely be confined to John Martin Reservoir, which was constructed and is operated by the U.S. Army Corps of Engineers (Corps). On September 25, 2001, the Service issued Biological Opinion # ES/GJ-6-CO-01-F-041 to the Corps for the federal action transferring recreation and surface water management to Colorado State Parks (now Colorado Parks and Wildlife [CPW]). In accordance with this opinion, the Corps developed an “Endangered Species Management Plan for Piping Plovers (*Charadrius melodis*) and Interior Least Terns (*Sterna antillarum athalassos*), John Martin Reservoir Project and John Martin State Park, Bent County, Colorado” (Plan) dated May 22, 2002. The Plan provides for monitoring, education, law enforcement, and habitat and population enhancement. Page 9 of the Plan states, “to mitigate for this possibility [of nest inundation], the Corps, in conjunction with CPW, will closely monitor pool elevations from the onset of nesting activity until brooding behavior occurs. Corps personnel will also receive training on techniques of nest relocation, and necessary materials and tools will be identified and stockpiled for emergency relocations”. Your June 28, 2013, letter went on to say that “Implementation of these commitments by the Corps should minimize the occurrence of incidental take at John Martin Reservoir associated with projected higher surface elevations at John Martin Reservoir. Based on Corps’ commitments laid out in the Plan to monitor and relocate nests anticipated to be inundated, Reclamation has concluded that the proposed actions may affect, but are not likely to adversely affect interior least terns or piping plovers at John Martin Reservoir”.

In an August 9, 2013, email from the Corps to the Service, the Corps stated, “Management at John Martin Reservoir, U.S. Army Corps of Engineers, Albuquerque District, Hasty, Colorado, is aware of the potential effects of the proposed Arkansas Valley Conduit Project to the reservoir level(s) of John Martin Reservoir. As stewards of the land(s), the U.S. Army Corps of Engineers has in place a management plan for the protection of the endangered and threatened species of birds that nest on the project. Management feels that the management program in place at the project and the district offices for endangered and threatened species will be more than adequate to assure that continued protection is afforded to the species if potential water-raising effects do occur from the Arkansas Valley Conduit Project”.

Your June 28, 2013, letter also stated that potential effects to the lesser prairie-chicken from the AVC project would be negligible as no construction would occur within one mile of any known lek. Furthermore, reservoir surface fluctuations under the proposed actions would also have no effect on this species. The proposed actions would temporarily disturb about 97 acres of potential habitat within lesser prairie-chicken range south of Lamar. Best management practices, such as restoration of disturbed habitat with native vegetation, restricting construction during nesting season, pre-construction surveys, and halting ground-disturbing activities if leks or active nests are encountered would be employed. Reclamation would stop construction and consult with the Service should potential effects on the lesser prairie-chicken be identified during construction.

Based on the information provided in your June 28, 2013, letter and the August 9, 2013, Corps email, the Service has concluded that the proposed AVC project may affect but is not likely to adversely affect the interior least tern and piping plover. Furthermore, the Service has concluded that the AVC project will not jeopardize the continued existence of the lesser prairie-chicken. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

If the Service can be of further assistance, please contact Sandy Vana-Miller of this office at (303) 236-4748.

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FWSR6/ES/LK, S. Vana-Miller