



United States Department of the Interior

BUREAU OF RECLAMATION
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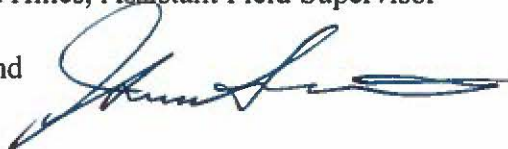
IN REPLY REFER TO:

EC-1310
ENV-7.00
2.2.1.06

FEB - 7 2019

MEMORANDUM

To: Colorado Ecological Services
Attn: Ms. Eliza Hines, Assistant Field Supervisor

From: J. Signe Snortland
Area Manager 

Subject: Walker Recharge Project Biological Assessment & Request for Formal Section 7 Consultation

This memorandum contains the Biological Assessment addressing potential impacts from the construction and operation of the Walker Recharger Project on federally-listed species in Nebraska. With this submission, the Bureau of Reclamation is 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 least tern (*Sternula antillarum*), northern Great Plains populations 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 initiation of Formal Consultation on the western prairie fringed orchid (*Plananthera praeclara*). Reclamation has also prepared an environmental assessment for the Walker Recharge Project which serves as the biological assessment for listed species in Colorado. Reclamation has determined that the Walker Recharge Project will have no effect on listed species in Colorado including Colorado Butterfly Plant (*Gaura neomexicana* var. *coloradensis*), Ute Ladies'-tresses (*Spiranthes diluvialis*), and Mexican Spotted Owl (*Strix occidentalis lucida*).

- 1. Applicant:** Central Colorado Water Conservancy District (Central)
- 2. Federal Agency:** Bureau of Reclamation
- 3. Project Name:** Walker Recharge Project
- 4. Location:** Section 13, 14, 15, 17, 18, 19, 29, 30, and 33, Township 4 North, Range 61 West of the 6th P.M. in Weld and Morgan Counties, Colorado.

Operation of the Walker Recharge Project will result in some amount of continuing historic and/or new depletions to the South Platte River associated with the diversion and recharge of up to 30,000 acre-feet from the South Platte River using an existing irrigation diversion and a constructing and operating a new wellfield, pipeline and recharge ponds.

Recharged water will be used as Central's Groundwater Management Subdistrict and Well Augmentation Subdistrict additional water supply to replace depletions caused by pumping of approximately 1,400 alluvial groundwater wells located within Central's boundaries. In recent years, Central's well owners have been curtailed by 50-75 percent because of insufficient replacement water supplies.

Reclamation is providing matching grant funding under its WaterSMART (Sustain and Manage America's Resources for Tomorrow) Drought Response Program for design and construction of the Walker Recharge Project and will issue a special use permit authorizing a pipeline across Reclamation's lands associated with the Narrows Project.

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, 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 compliance¹ for the effects to the target species and whooping crane critical habitat 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, whooping crane critical habitat, and 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 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 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.

¹ "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 and 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.

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 an “existing water related activity” because they reflect the effects of a surface water or hydrologically connected groundwater activity implemented on or before July 1, 1997, with the intent and coverage of the Program. [Program, I.A. footnote 3].

The Applicant intends to rely on the provisions of the Program to provide ESA compliance for potential impacts to target species and whooping crane habitat. Reclamation intends to require, as a condition of any approval, that includes participation in the South Platte Water Related Activities Program, Inc. (SPWRAP). Reclamation also intends to retain discretionary Federal authority for the Walker Recharge Project, consistent with applicable regulations and Program provisions, in case re-initiation of Section 7 consultation is required.

This memorandum 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 Walker Recharge Project to any other federally-listed threatened or endangered species and designated critical habitats will address within the applicable biological opinion prepare by the Service, in accordance with the ESA.

Enclosures

Supplemental Worksheet for PRRIP BA
Central’s 2018 SPWRAP Certificate of Membership

Supplemental Worksheet for PRRIP BA Template

The information below is needed for the U.S. Fish & Wildlife Service (Service) to complete a formal ESA Section 7 consultation in a streamlined manner under the Platte River Recovery Implementation Program (PRRIP) and June 16, 2006, programmatic biological opinion. The worksheet can also help the Service determine if consultation is required (see [link](#) for exceptions to the consultation requirements).

1. **Applicant Name:** Central Colorado Water Conservancy District
2. **Federal Agency Involved (if applicable):** U.S. Bureau of Reclamation
3. **Project Name/Description of Project or Proposed Action:**
Walker Recharger Project. Phase 1 of project includes using an existing surface diversion (irrigation ditch) to divert water to a recharge pond near the north bank of the South Platte River and at least one well or well field land pipeline located on the South bank of the South Platte River to deliver water to at least one recharge charge pond. Phase 2 includes development of additional surface diversions, well fields, pipelines and recharge ponds capable of diverting and recharging up to 30,000 acre-feet per year at rates up to 100 cfs from the South Platte River. Recharge ponds will be located up to 3 miles from the diversion. The project will be used to help Central conjunctively manage its surface and groundwater supplies to increase reliability of irrigation water supplied to agricultural producers in Colorado.
4. **Project Location (include street address, or comparable, specific location information and County):**
Weld and Morgan County, Colorado. Sections 13, Township 4N, Range 61W and Sections 17, 18, and 30, Township 4N, Range 60W, 6th Principle Meridian.
5. **General Description of Water Source(s) (no need to identify specific/associated water rights):**

a. % Transbasin Imports	<u> </u>	%
b. % Native South Platte Water	<u>100</u>	%
c. % Nontributary Groundwater	<u> </u>	%
d. % Other (please specify; e.g., in-basin agricultural conversion, reuse, etc.)	<u> </u>	%
6. **Water Use Classification (check one or both boxes, as applicable):**
 - a. Water use qualifies as an "existing water related activity"
(Water use is surface water or hydrologically connected groundwater that has historically been used prior to July 1, 1997)
 - b. Water use qualifies as a "new water related activity"
(includes new and expanded existing projects)
(Water use constitutes a new surface water or hydrologically connected groundwater that will occur after July 1, 1997)
7. **Annual Volumetric (acre-feet) water use (existing; new; and future buildout, if applicable) associated with the Project:**
up to 30,000 acre-feet when water rights are in priority

YEAR: 2018

3,433.0 UNITS

CERTIFICATE OF MEMBERSHIP

South Platte Water Related Activities Program, Inc.

CLASS W

Central Colorado Water Conservancy District

This certifies that _____ ("Member")
has become a Class W member of the South Platte Water Related Activities Program, Inc. (SPWRAP), a non-profit corporation incorporated under the laws of the State of Colorado. This Certificate indicates that Member has paid all assessments owed on its membership through the current year identified above. This membership is not transferable except as may be provided in the Articles or Bylaws of SPWRAP. Additional terms, conditions and limitations pertaining to this membership are printed on the back hereof.

In Witness Whereof, SPWRAP has caused this Certificate to be signed by its duly authorized officers, and sealed with the seal of the corporation this 20th day of February, 2018.

Kim Hutton
President



Daniel Hutton
Secretary



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
9325 South Alda Road
Wood River, Nebraska 68883

March 2, 2019

FWS-NE: 2019-065

Mr. J Signe Snortland
Bureau of Reclamation
Eastern Colorado Area Office
11056 West County Road 18E
Loveland, Colorado 80537

RE: Walker Recharge Reservoir Project, in Weld and Morgan County, Colorado.

Dear Mr. Snortland:

This biological opinion is provided in response to your November 26, 2018, and revised February 7, 2019, biological assessment and request to initiate formal consultation pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (ESA). Your biological assessment describes the potential effects of the Walker Recharge Reservoir Project on federally listed species and designated critical habitat.

The federal action reviewed in this biological opinion is the Bureau of Reclamation's (BOR) proposed authorization of a special use permit and funding through matching grants under its WaterSMART Drought Response Program for design and construction of the Walker Recharge Reservoir Project, located in Sections 13, 14, 15, 17, 18, 19, 29, 30, and 33, Township 4 North, Range 61 West in Weld and Morgan County, Colorado. The applicant, Central Colorado Water Conservancy District, is seeking to construct and operate the reservoir, a new well field, a pipeline and recharge ponds. The project will divert and recharge up to 30,000 acre feet (af) of water from the South Platte River using an existing irrigation diversion. The Central Colorado Water Conservancy District is a certified member of the South Platte Water Related Activities Program, Inc. (SPWRAP) and is in good standing.

I. Background

On June 16, 2006, the U.S. Fish and Wildlife Service (Service) issued a programmatic biological opinion (PBO) for the Platte River Recovery Implementation Program

(PRRIP) and water-related activities¹ affecting flow volume and timing in the central and lower reaches of the Platte River in Nebraska. The action area for the PBO included the Platte River basin upstream of the confluence with the Loup River in Nebraska, and the mainstem of the Platte River downstream of the Loup River confluence.

The Federal Action addressed by the PBO included the following:

1. funding and implementation of the PRRIP for 13 years, the anticipated first stage of the PRRIP; and
2. continued operation of existing and certain new water-related activities² including, but not limited to, Reclamation and Service projects that are (or may become) dependent on the PRRIP for ESA compliance during the first 13-year stage of the PRRIP for their effects on the target species³, whooping crane critical habitat, and other federally listed species⁴ that rely on central and lower Platte River habitats.

The PBO established a two-tiered consultation process for future federal actions on existing and new water-related activities subject to section 7(a)(2) of the ESA, with issuance of the PBO being Tier 1 and all subsequent site-specific project analyses constituting Tier 2 consultations covered by the PBO. Under this tiered consultation process, the Service will produce tiered biological opinions when it is determined that future federal actions are “likely to adversely affect” federally listed species and/or designated critical habitat in the PRRIP action area and the project is covered by the PBO. If necessary, the biological opinions will also consider potential effects to other listed species and critical habitat affected by the federal action that were not within the scope of the Tier 1 PBO (e.g., direct or indirect effects to listed species occurring outside of the PRRIP action area).

Although the water depletive effects of this Federal Action to central and lower Platte River species have been addressed in the PBO, when a no effect, or may affect, but not

¹ The term “water-related activities” means activities and aspects of activities which (1) occur in the Platte River basin upstream of the confluence of the Loup River with the Platte River; and (2) may affect Platte River flow quantity or timing, including, but not limited to, water diversion, storage and use activities, and land use activities. Changes in temperature and sediment transport will be considered impacts of a “water related activity” to the extent that such changes are caused by activities affecting flow quantity or timing. Impacts of “water related activities” do not include those components of land use activities or discharges of pollutants that do not affect flow quantity or timing.

² “Existing water related activities” include surface water or hydrologically connected groundwater activities implemented on or before July 1, 1997. “New water-related activities” include new surface water or hydrologically connected groundwater activities including both new projects and expansion of existing projects, both those subject to and not subject to section 7(a)(2) of the ESA, which may affect the quantity or timing of water reaching the associated habitats and which are implemented after July 1, 1997.

³ The “target species” are the endangered whooping crane (*Grus americana*), the interior least tern (*Sternula antillarum*), the pallid sturgeon (*Scaphirynchus albus*), and the threatened northern Great Plains population of the piping plover (*Charadrius melodus*).

⁴ Other listed species present in the central and lower Platte River include western prairie fringed orchid (*Platanthera praecleara*) American burying beetle (*Nicrophorus americanus*) and Eskimo curlew (*Numenius borealis*).

likely to adversely affect, determination is made on a site-specific basis, the Service will review these determinations and provide written concurrence where appropriate. Upon receipt of written concurrence, section 7(a)(2) consultation will be considered completed for those federal actions.

Water-related activities requiring federal approval will be reviewed by the Service to determine if: (1) those activities comply with the definition of existing water-related activities; and/or (2) proposed new water-related activities are covered by the applicable state or the federal depletions plan. The Service has determined that the Walker Recharge Reservoir Project meets the above criteria; therefore, this Tier 2 biological opinion regarding the effects of the Walker Recharge Reservoir Project on the target species, whooping crane critical habitat, American burying beetle, and western prairie fringed orchid, in the central and lower Platte River, can tier from the June 16, 2006 PBO.

II. Consultation History

Table II-1 of the PBO (pages 21-23) contains a list of species and 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 Tier 1 PBO that the Federal Action, including the continued operation of existing and certain new water-related activities, may adversely affect but would not likely jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened northern Great Plains population of the piping plover, and western prairie fringed orchid in the central and lower Platte River. Further, the Service determined that the Federal Action, including the continued operation of existing and certain new water-related activities, 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. Bald eagles continue to be protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. For more information on bald eagles, see the Service's webpage at:

<http://www.fws.gov/migratorybirds/BaldEagle.htm>

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 effects of the continued operation of existing and certain new water-related activities on the remaining species and critical habitats listed in Table II-1 of the PBO were beyond the scope of the PBO and were not considered.

The Service has reviewed the information contained in the February 7, 2019, biological assessment submitted by your office and received by our office on February 8, 2019. We concur with your determination of may affect, and likely to adversely affect, for the whooping crane, interior least tern, pallid sturgeon, northern Great Plains population of the piping plover, and the western prairie fringed orchid in the central and lower Platte River. We also concur with your determination of may affect, and likely to adversely affect, for designated whooping crane critical habitat. We also concur with your determinations of may affect, but not likely to adversely affect, for the American burying beetle. Additionally, you have made a determination of no effect for the Ute ladies' tresses orchid, Colorado butterfly plant, Preble's meadow jumping mouse and its designated critical habitat. We acknowledge those no effect determinations.

III. Scope of the Tier 2 Biological Opinion

The Walker Recharge Reservoir Project is a component of "the continued operation of existing and certain new water-related activities" requiring a federal action to be evaluated in the Tier 1 PBO, and flow-related effects of the Federal Action are consistent with the scope and the determination of effects in the June 16, 2006 PBO. Because the Central Colorado Water Conservancy District has elected to participate in the PRRIP, ESA compliance for flow-related effects to federally listed endangered and threatened species and designated critical habitat from Walker Recharge Reservoir Project is provided to the extent described in the Tier 1 PBO.

This biological opinion applies to the Walker Recharge Reservoir Project effects to listed endangered and threatened species and designated critical habitat as described in the PBO for the first thirteen years of the PRRIP (i.e., the duration of the first PRRIP increment).

IV. Description of the Federal Action

The Federal Action is the applicant's (Central Colorado Water Conservancy District) need for funding and authorization by the BOR under a special use permit to construct a pipeline across BOR. These activities, located in Weld and Morgan County, Colorado, performed by the Central Colorado Water Conservancy District, will result in depletions to the Platte River caused by pumping of approximately 1,400 alluvial wells.

The applicant proposes to use an existing irrigation diversion and construct a new wellfield, pipeline, and recharge ponds to convey flows from the South Platte River to the Walker Recharge Reservoir. The water source being used for the Walker Recharge Reservoir Project is made up of 100 percent native South Platte River water. The annual volumetric recharge at Walker Recharge Reservoir is 30,000 af. These depletions to the Platte River are considered a continuing historic "existing water-related activity."

V. Status of the Species/Critical Habitat

Species descriptions, life histories, population dynamics, status and distributions are fully described in the PBO on pages 76-156 for the whooping crane, interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid, and whooping crane critical

habitat and are hereby incorporated by reference. Climate change is not explicitly identified in the Tier 1 PBO as a potential threat, except for whooping crane and whooping crane critical habitat.

The terms "climate" and "climate change" are defined by the Intergovernmental Panel on Climate Change (IPCC). "Climate" refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term "climate change" thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8-14, 18-19).

Changes in temperature and/or precipitation patterns will influence the status of the Platte River system. These changes may contribute to threats that have already been identified and discussed for interior least tern, piping plover, pallid sturgeon and western prairie fringed orchid in the Tier I PBO.

Since issuance of the Services PBO, there have been no substantial changes in the status of the target species/critical habitat other than the bald eagle delisting previously mentioned.

VI. Environmental Baseline

The Environmental Baseline sections for the Platte River and for the whooping crane, interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid, and whooping crane critical habitat are described on pages 157 to 219 of the Tier 1 PBO, and are hereby incorporated by reference.

VII. Effects of the Action

The Tier 1 BO did not address climate change in the Effects of the Action section, as human activities (upstream storage, diversion, and distribution of the river's flow) are the most important drivers of change that adversely affect species habitat in the action area. Since issuance of the Tier 1 PBO, our analyses under the ESA include consideration of ongoing and projected changes in climate. In our analyses, we used our best professional judgement to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change. Actions that are undertaken to improve the river ecology and habitats for listed species not only address human activities, but also contribute to listed species and whooping crane critical habitat resiliency to climate change.

Based on our analysis of the information provided in your biological assessment for the Walker Recharge Reservoir Project, the Service concludes that the proposed Federal Action will result in a continuing water-related activity and depletion to the Platte River system. These depletions are associated with municipal, industrial and/or agricultural water use for the Central Colorado Water Conservancy District. The applicant 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. The BOR intends to require, as a condition of any approval, that the applicant fulfill the responsibilities required of Program participants in Colorado, which includes participation in the SPWRAP. The applicant has provided certification that they are a member in good standing with the SPWRAP.

As an existing water-related activity, we have determined that the flow-related adverse effects of the Walker Recharge Reservoir Project are consistent with those evaluated in the Tier 1 PBO for the whooping crane, interior least tern, piping plover, pallid sturgeon, western prairie fringed orchid, and whooping crane critical habitat and these effects on flows are being addressed in conformance with the Colorado Plan for Future Depletions of the PRRIP and the SPWRAP, which the applicant has elected to participate in.

VIII. Cumulative Effects

Cumulative effects include the effects of future State, local, or private (non-federal) actions that are reasonably certain to occur in the action area considered in this biological opinion. A non-federal action is “reasonably certain” to occur if the action requires the approval of a State or local resource or land-control agency, such agencies have approved the action, and the project is ready to proceed. Other indicators which may also support such a “reasonably certain to occur” determination include whether: a) the project sponsors provide assurance that the action will proceed; b) contracting has been initiated; c) State or local planning agencies indicate that grant of authority for the action is imminent; or d) where historic data have demonstrated an established trend, that trend may be forecast into the future as reasonably certain to occur. These indicators must show more than the possibility that the non-federal project will occur; they must demonstrate with reasonable certainty that it will occur. Future federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act and would be consulted on at a later time.

Cumulative effects are described on pages 194 to 300 of the Tier 1 PBO, and are hereby incorporated by reference.

IX. Conclusions

The Service concludes that the proposed Walker Recharge Reservoir Project is consistent with the Tier 1 PBO for effects to listed species and critical habitat addressed in the Tier 1 PBO. After reviewing site specific information, including: 1) the scope of the Federal Action; 2) the environmental baseline; 3) the status of the whooping crane, interior least tern, piping plover, pallid sturgeon, and western prairie fringed orchid in the central and

lower Platte River and their potential occurrence within the project area, as well as whooping crane critical habitat; 4) the effects of the Walker Recharge Reservoir Project; and 5) any cumulative effects, it is the Service's biological opinion that the Walker Recharge Reservoir Project, as described, is not likely to jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened northern Great Plains population of the piping plover or western prairie fringed orchid in the central and lower Platte River. The Federal Action is also not likely to destroy or adversely modify designated critical habitat for the whooping crane.

X. Incidental Take Statement

Section 9 of ESA and federal regulations pursuant to section 4(d) of ESA prohibit the take of endangered and threatened species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct, and applies to individual members of a listed species. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under ESA provided that such taking is in compliance with the terms and conditions of this incidental take statement.

Sections 7(b)(4) and 7(o)(2) of ESA do not apply to the incidental take of federally listed plant species (e.g., Colorado butterfly plant, Ute ladies' tresses orchid, and western prairie fringed orchid). However, limited protection of listed plants from take is provided to the extent that ESA prohibits the removal and reduction to possession of federally listed endangered plants or the malicious damage of such plants on non-federal areas in violation of state law or regulation or in the course of any violation of a state criminal trespass law. Such laws vary from state to state.

The Department of the Interior, acting through the Service and BOR, is implementing all pertinent Reasonable and Prudent Measures and implementing Terms and Conditions stipulated in the Tier 1 PBO Incidental Take Statement (pages 309-326 of the PBO) which will minimize the anticipated incidental take of federally listed species. In instances where the amount or extent of incidental take outlined in the Tier 1 PBO is exceeded, or the amount or extent of incidental take for other listed species is exceeded, the specific PRRIP action(s) causing such take shall be subject to reinitiation expeditiously.

XI. Closing Statement

Any person or entity undertaking a water-related activity that receives federal funding or a federal authorization and which relies on the PRRIP as a component of its ESA compliance in section 7 consultation must agree: (1) to the inclusion in its federal funding or authorization documents of reopening authority, including reopening authority to accommodate reinitiation upon the circumstances described in Section IV.E. of the Program document; and (2) to request appropriate amendments from the federal action agency as needed to conform its funding or authorization to any PRRIP adjustments negotiated among the three states and the Department of the Interior, including specifically new requirements, if any, at the end of the first PRRIP increment and any subsequent PRRIP increments. The Service believes that the PRRIP should not provide ESA compliance for any water-related activity for which the funding or authorization document does not conform to any PRRIP adjustments (Program Document, section VI). Reinitiation of consultation over Walker Recharge Reservoir Project will not be required at the end of the first 13-years of the PRRIP provided a subsequent Program increment or first increment Program extension is adopted pursuant to appropriate ESA and NEPA compliance procedures, and, for a subsequent increment, the effects of the Walker Recharge Reservoir Project are covered under a Tier 1 PBO for that increment addressing continued operation of previously consulted-on water-related activities.

This concludes formal consultation on the actions outlined in the request from the BOR. 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, the specific action(s) causing such take shall be subject to reinitiation expeditiously.

Requests for reinitiation, or questions regarding reinitiation should be directed to the Service's Nebraska Ecological Service Field Office at the above address.

XII. Conservation Recommendations

Section 7(a)(1) of ESA directs Federal agencies to utilize their authorities to further the purposes of ESA by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of an action on listed species or critical habitat, to help implement recovery plans, or to develop information. Conservation recommendations are provided in the PBO (pages 328-329) and are hereby incorporated by reference.

XIII. Literature Cited

Platte River Recovery Implementation Program document. 2006.

U.S. Department of the Interior. 2006. Platte River Recovery Implementation Program Final Environmental Impact Statement.

U.S. Fish and Wildlife Service. 2006. Biological opinion on the Platte River Recovery Implementation Program.

We appreciate the opportunity to review and comment on this proposed project. Should you have questions, please contact Mr. Matt Rabbe within our office at matt_rabbe@fws.gov or (308) 382-6468, extension 205.

Sincerely,



Eliza Hines
Nebraska Field Supervisor

cc: FWSR6/WTR, T. Econopouly
FWSR6/ES/CO, E. Duran
FWSR6/ES/CO, D. DeBerry
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