



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Mountain Prairie Region

ECOLOGICAL SERVICES

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IN REPLY REFER TO:

ES/GJ-6-CO-12-F-007

Permit Numbers: TE80129A-0; TE80161A-0; TE80170A-0; TE80181A-0; TE80182A-0; TE80183A-0; TE80173A-0;
TE80184A-0; TE80180A-0; TE80167A-0; TE80159A-0; TE80162A-0

**FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF
INCIDENTAL TAKE PERMITS
FOR THE
SOUTHWESTERN WILLOW FLYCATCHER AND WESTERN U.S. DISTINCT
POPULATION SEGMENT OF THE YELLOW-BILLED CUCKOO
IN
SAN LUIS VALLEY, COLORADO**

The U.S. Fish and Wildlife Service (Service) is proposing to issue 12 section 10(a)(1)(B) Incidental Take Permits (ITPs) under the Endangered Species Act (16 USC § 1531-1544) of 1973 as amended (ESA) to the Rio Grande Water Conservation District (District); the State of Colorado Department of Natural Resources (DNR); the six counties that comprise the San Luis Valley (Valley) floor (Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache (Counties); and the four cities and towns that contain riparian habitat (Alamosa, Monte Vista, Del Norte, and South Fork (Municipalities)). The District, DNR, Counties, and Municipalities are the applicants but are collectively referred to as the Permittees.

The ITPs will authorize a specified amount of incidental take of the federally endangered southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) and the candidate western U.S. distinct population segment of the yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo) resulting from routine agriculture, small community infrastructure construction and operation, and riparian habitat conservation and restoration activities within the San Luis Valley, Colorado. The flycatcher and cuckoo are collectively referred to herein as the covered species. Each ITP will be in effect for 30 years. The District, working with the Service and other partners, developed the San Luis Valley Regional Habitat Conservation Plan (HCP) as part of the application for the ITPs.

The proposed HCP focuses conservation on about 250 stream miles of riparian habitat and provides coverage for agriculture and infrastructure activities on more than 4,000 square miles (2.9 million acres) of land in the Valley. This area encompasses the entire Colorado portion of the flycatcher recovery area, designated as the San Luis Valley Management Unit in the final Southwestern Willow Flycatcher Recovery Plan (Recovery Plan) (Service 2002). The District will administer the HCP on behalf of the Counties and Municipalities, in cooperation with the DNR and its associated divisions, such as Colorado Parks and Wildlife and Division of Water Resources.

Based on information in the Recovery Plan (Service 2002) and Section 2.1 of the proposed HCP and our analysis in our ESA section 7 Biological Opinion (BO) (Service 2012a), issuance of the ITPs under the Proposed Action may result in the following take of flycatchers and cuckoos over the 30-year permit term:

- Southwestern willow flycatcher – 3 active territories (6 adults), 12 eggs/nestlings/dependent fledglings
- Yellow-billed cuckoo – 1 active territory (2 adults), 4 eggs/nestlings/dependent fledglings

Pursuant to the National Environmental Policy Act (NEPA) of 1969, we evaluated the potential environmental effects associated with the Proposed Action of issuing the ITPs and implementation of the HCP, as well as two alternatives, in an Environmental Assessment (EA).

Changes Made Between Draft and Final HCP and EA

The Notice of Availability for the draft HCP and draft EA was published in the Federal Register (FR) on July 25, 2012 (77 FR 43609). Public comment was solicited and the comment period ended on September 24, 2012. A summary paragraph of the public comments was inserted into

the final HCP. Some minor changes in Permittee responsibilities and funding language were made in the HCP to be consistent with the Implementing Agreement. The draft EA broadly estimated a potential maximum amount of take for adult flycatchers and cuckoos. Subsequently, the estimates for incidental take were refined in the Incidental Take Statement in the BO, based on further analyses. The final EA was adjusted to reflect the BO, including take of eggs, nestlings, and fledglings. A statement was inserted in the HCP that landowners will be encouraged to voluntarily disclose the type and acreage of covered activities they implement to help support tracking of impacts.

Decision Rationale

Based on a detailed review of the HCP and the analyses in the EA, we selected the Proposed Action because it:

- provides long-term holistic conservation strategy for the covered species and their habitat through a more effective and responsive mitigation strategy that emphasizes the protection and enhancement of high-quality habitat on both state and private properties;
- provides for broader opportunities for habitat conservation across a variety of land ownerships, rather than just on public lands as in the Public Lands Mitigation HCP alternative;
- provides for habitat quality monitoring on select federal, state, and private lands to be incorporated into a well-defined and robust adaptive management process; and
- provides a more cost-effective, streamlined process for ESA coverage while ensuring a more strategic approach to conservation of the species, rather than a piecemealed approach that would occur in the No Action alternative, which would rely on the development of individual HCPs case-by-case.

Table 1 provides a summary description of the three alternatives we analyzed. Further details on each alternative are in Section 2.0 of the EA.

Table 1. Summary of the Alternatives Evaluated

Topic	No Action	Public Land Mitigation HCP Alternative	San Luis Valley Regional HCP (Proposed Action)
Type of Activities Covered	None, or determined on a project-by-project basis if individual landowner HCPs are developed	Routine agriculture, community infrastructure, and conservation and restoration activities	Routine agriculture, community infrastructure, and conservation and restoration activities
Participants	Nonfederal entities, potentially including, but not limited to, the District, Counties, Municipalities, state agencies, private landowners, and developers, on an individual basis	District, Counties, Municipalities, and DNR, with coverage extended to private landowners	District, Counties, Municipalities, and DNR, with coverage extended to private landowners
Covered Species	Based upon individual project	Flycatcher and cuckoo	Flycatcher and cuckoo
Permit Area/Duration	Based upon individual project	Valley floor within Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties; 30-year permit	Valley floor within Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties; 30-year permit

Topic	No Action	Public Land Mitigation HCP Alternative	San Luis Valley Regional HCP (Proposed Action)
Mitigation	Determined on a project-by-project basis	<ul style="list-style-type: none"> • Habitat restoration and enhancement on State Wildlife Areas • Voluntary impact minimization measures • Education and outreach efforts • Other voluntary conservation measures 	<ul style="list-style-type: none"> • Habitat mitigation credits through conservation easements on private lands, restoration and enhancement projects, or habitat management agreements • State and federal land management commitments • Education and outreach efforts • Other voluntary conservation measures
Monitoring	Determined on a project-by-project basis	<ul style="list-style-type: none"> • Repeat Valley-wide habitat mapping • Flycatcher surveys on public lands 	<ul style="list-style-type: none"> • Habitat quality monitoring on mitigation lands and federal/state reference sites • Repeat Valley-wide habitat mapping • Flycatcher surveys on public lands
Adaptive Management	Determined on a project-by-project basis	<ul style="list-style-type: none"> • Additional measures if greater than 10 percent of habitat is lost due to the covered activities • Additional measures could include required habitat conservation, required impact minimization, county land use policies, or additional monitoring 	<ul style="list-style-type: none"> • Monitoring evaluation to ensure sufficiency of mitigation lands • Change or substitute mitigation credits as needed to maintain mitigation balance • Evaluate impact assumptions based on long-term habitat trends and changes and adjust implementation accordingly
Administration	Determined on a project-by-project basis	<ul style="list-style-type: none"> • District HCP coordinator and steering committee 	<ul style="list-style-type: none"> • District HCP administrator and steering committee

Finding of No Significant Impact

Based upon information contained in the EA, HCP, BO, and Implementing Agreement, and consideration of comments received during the public review, we find that the proposed issuance of section 10(a)(1)(B) ITPs for southwestern willow flycatcher and yellow-billed cuckoo, in association with routine agriculture, community infrastructure, and riparian habitat conservation and restoration activities within the San Luis Valley as described in the HCP, will not significantly affect the quality of the human environment for the following reasons:

1. The HCP includes measures to minimize impacts to the covered species and their habitat. The 270 acres of temporary and 34.2 acres of permanent habitat modification or loss expected from the covered activities is only about 2 to 3 percent of available woody riparian habitat for both the flycatcher and cuckoo in the Valley. It is unlikely that all potentially impacted habitat is occupied by the covered species. The level of take expressed in adult flycatchers is only about 0.2 percent of the rangewide population estimate and the level of take expressed in adult cuckoos is only about 0.1 percent of the rangewide population estimate. In our ESA section 7 BO (Service 2012a), incorporated

herein by reference, we determined that issuance of the ITPs and implementation of the proposed HCP will not jeopardize the survival and recovery of the flycatcher or cuckoo.

2. The anticipated adverse effects of temporary habitat modification to flycatchers and cuckoos in the Valley will primarily be of short duration (about 3 years at a given site) and the birds will likely be able to use temporarily impacted habitat once it returns to suitable condition or use alternative suitable habitat nearby.
3. The HCP will result in a net conservation benefit to the covered species because the impacts will be mostly temporary and in marginal habitat, while the mitigation through conservation easements will protect large patches of high-quality habitat in perpetuity or for long durations. Further minimization and mitigation measures will promote the maintenance, enhancement, or restoration of suitable habitat. As a result, the HCP is expected to contribute to the conservation and recovery of the covered species.
4. If monitoring or other additional information indicates that the amount of impacted habitat becomes greater than anticipated, the adaptive management program in the HCP requires adjustments in mitigation to offset the additional loss of habitat so that the HCP will continue to contribute to the conservation and recovery of the covered species.
5. The quantity of nesting habitat that currently occurs and will occur through mitigation under the HCP is sufficient to meet the recovery goals outlined for the San Luis Valley Recovery Unit as prescribed in the Recovery Plan (Service 2002).
6. Implementation of the HCP will have negligible to no impacts to vegetation, wetland, riparian, and aquatic resources; threatened and endangered species and species of concern; wildlife; cultural resources; water resources and water quality; and environmental justice. Implementation of the HCP will provide long-term benefits to land use and administration, water resources management, and overall conservation efforts, as well as economic and community infrastructure benefits to landowners, Counties, and Municipalities within the Valley.

Public Comment

The HCP was developed with considerable input from, and collaboration with, the public and stakeholder organizations. The public participation process included a public scoping meeting, stakeholder consultation meetings, discussions and meetings with individual stakeholders and organizations, presentations to community groups and elected officials, and the dissemination of outreach materials.

On July 25, 2012, we issued a notice of availability in the *Federal Register* (77 FR 43611) announcing the receipt of the ITP applications and the availability of the HCP and EA for public review. A 60-day public review and comment period was open until September 24, 2012. The draft EA and draft HCP were available at, or could be requested through, the Service's Western Colorado Field Office. A notice of availability of the draft EA and draft HCP were also distributed to individuals and organizations on mailing lists maintained by the Service and District. Those receiving the notice of availability included public agencies, tribal governments, and interested and/or affected local organizations and private entities. Six comment letters were received – four in support of the draft HCP and draft EA and one letter expressing that they had

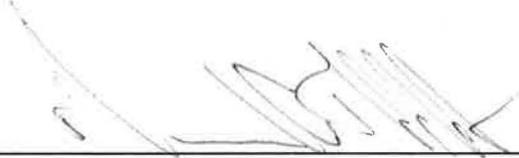
no comment. One letter was received after the closing of the comment period from the San Luis Valley Ecosystem Council. This letter supported the concept of the HCP, but identified seven concerns that we evaluated and addressed (see our responses in Appendix A). The comments did not identify any significant new environmental impacts not previously addressed in the draft EA.

Conclusion

Based upon my review and evaluation of the information contained in the EA, HCP, and other supporting documents, I have determined that the issuance of ITPs and implementation of the HCP, as proposed, is not a major federal action that will significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, preparation of an environmental impact statement on the Proposed Action is not required.

Documents used in the preparation of this finding of no significant impact include the HCP (ERO Resources Corporation 2012), EA (Service 2012b), BO (Service 2012a), and Implementing Agreement. All documents are incorporated herein by reference, as described in 40 CFR 1508.13. All supporting documents are on file and available for public inspection, by appointment, at:

U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946; (970) 243-2778.



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Date

Related Documents

- ERO Resources Corporation. 2012. Final San Luis Valley Regional Habitat Conservation Plan. Prepared for Rio Grande Water Conservation District, Alamosa, CO. 136 pp. + appendices.
- U.S. Fish and Wildlife Service (Service). 2002. Final Recovery Plan Southwestern Willow Flycatcher. Region 2, U.S. Fish and Wildlife Service, Albuquerque, NM.
- U.S. Fish and Wildlife Service (Service). 2012a. Intra-Service Biological and Conference Opinion - Issuance of a Section 10(a)(1)(B) Permit for Incidental Take of an Endangered Species Associated with the San Luis Valley Regional Habitat Conservation Plan.
- U.S. Fish and Wildlife Service (Service). 2012b. Final Environmental Assessment for the San Luis Valley Regional Habitat Conservation Plan. 58 pp.

Appendix A. Public Comments on the Draft HCP/EA

We received six letters regarding the draft HCP and draft EA. Four of these letters expressed support for the HCP and did not provide specific comments on the draft documents and one letter stated no comment. A letter received from the San Luis Valley Ecosystem Council included more specific comments. Responses to these comments are provided below.

Responses to San Luis Valley Ecosystem Council letter regarding the draft HCP and draft EA

1. The emphasis on voluntary participation requires formal commitments.

Formal commitment to implement both mitigation and minimization responsibilities are stated in both the HCP and the Implementing Agreement. Under the HCP, the Rio Grande Water Conservation District (District) would be responsible for coordinating and ensuring that mitigation and minimization requirements are implemented. Although the HCP provides the option for landowners to voluntarily participate in mitigation and minimization activities, this flexible approach does not absolve the responsibility by the Permittees to fulfill mitigation requirements.

2. The HCP is a status quo plan and is not a recovery plan.

Section 10(a)(1)(B) of the Endangered Species Act (ESA) and its associated regulations do not require an HCP to be a recovery plan. However, we believe that this HCP is consistent with our Recovery Plan for the Southwestern Willow Flycatcher and will contribute to the recovery of the species by providing a net conservation benefit. Impacts from the covered activities would be mostly temporary and in marginal habitat, while the HCP's mitigation, through conservation easements, would protect large patches of high quality habitat in perpetuity or for long durations. Further minimization and mitigation measures would promote the maintenance, enhancement, or restoration of suitable habitat.

3. The Steering Committee should include non-applicant, independent scientists and citizens.

Section 5.6 of the HCP provides suggestions for who may participate in the Steering Committee. Both representatives of conservation/environmental organizations and public citizens are included in that list. The HCP states that Steering Committee participants are not limited to that list.

4. The rotating matrix concept requires testing and on-going monitoring.

The rotating matrix concept was used in the HCP as a way to explain natural ecosystem changes to riparian habitat and why and how the majority of impacts from covered activities are temporary impacts. Natural changes to riparian habitat can occur from flooding that may temporarily remove habitat, but it will likely grow back into suitable habitat in about 3 years. Habitat also may be permanently removed from one side of the river but expand on the other side

of the river as the channel shifts or as deposits settle downstream in areas not previously supporting habitat. A number of the HCP's covered activities, such as cutting or burning willows along ditches, will allow regrowth of willows or other shrubs that can support both flycatchers and cuckoos in intervening years between the activities that may occur every few years or only once every several decades. Monitoring of habitat is incorporated in Section 6 of the HCP and is intended to track the Valley-wide extent of riparian habitat as well as quality of the habitat on mitigation and reference sites.

5. *The USFWS should monitor funding.*

As stated in Section 8.1 of the HCP, one of the permit issuance criteria under section 10(a)(1)(A) of the ESA requires the Service to determine that adequate funding is ensured to implement requirements of the HCP. Section 7.0 of the HCP describes the commitment of adequate funding for implementation of the HCP. Section 6.0 of the HCP requires that an annual report of HCP activities will be submitted to the Service. Such reporting will provide evidence that adequate funding was provided to implement minimization, mitigation, and monitoring requirements. As stated in Section 7.0 of the draft Implementing Agreement the Permittees will promptly notify the Service of any material change in their financial ability to fulfill their obligations of the HCP and would work collaboratively to find solutions to ensure full implementation of the HCP. Consequently, these commitments will ensure that the Service is knowledgeable of any future funding shortfalls.

6. *Actions consequent to unforeseen events with regard to local governments need to be clarified.*

The comment refers to ensuring that the goals of the HCP are not jeopardized by the unforeseen event of Permittee withdrawal from the HCP. The HCP addresses the possibility of such an event. Withdrawal by one or more of the Permittees is included as a potential "Changed Circumstance" in items 10-13 under Section 7.4 of the HCP. That section of the HCP also describes actions to address withdrawals.

7. *Climate change mitigation plan needs to be developed to offset the loss of habitat.*

Section 10(a)(1)(B) of the ESA requires that an HCP minimize and mitigate the impacts of take of covered species from the covered activities – it does not require permittees to minimize or mitigate impacts from other activities beyond their control, including climate change. Except in extreme climatic events, it will likely be difficult to detect changes in habitat due to climate change. Furthermore, as stated in Section 7.4 (Changed Circumstances) of the HCP, a recent climate model (Climate Wizard) projected a slight increase in both temperature and precipitation in the Valley by 2050. If the model holds true the additional precipitation could actually increase habitat for the flycatcher and cuckoo.