Biological Assessment PQS Memorandum

DATE 11/6/2015

TO Wendy Austin, NEPA Project Manager

Cc Tony Ringenberg, EPU Project Manager

FROM Melissa Marinovich, T&E Species Biologist

SUBJECT Crawford South; STP-71-4(123); CN 51532
Threatened & Endangered Species Concurrence

The biological assessment final approval on: **11/6/2015**

Threatened and Endangered Species Effect Determination:

☐ The Project(s) will have "No Effect" to all state or federally listed species or their designated critical habitat (Level 1).

☒ A "May Affect, Not Likely to Adversely Affect" determination is made for the following species/critical habitat with the conservation conditions listed below: **Finescale Dace, Northern Redbelly Dace**.

☐ This BA required FHWA Review and Approval.

FHWA Concurrence Date:

☐ This BA required further consultation with the resource agencies (Level 2).

USFWS Concurrence Date:

NGPC Concurrence Date:

☐ Unique conservation conditions were developed and are included below (Level 3).

☐ A "May Affect, Likely to Adversely Affect" determination is made for the following species/critical habitat with the conservation conditions listed below: (Level 3).

Additional Coordination with Other Tribal or Federal Agencies:

Description of Coordination:

Bald and Golden Eagle Protection Act:

This project was reviewed for potential impacts to bald and golden eagles. It has been determined that suitable habitat does exist within 0.5 miles of the Environmental Study Area. NDOR will utilize the Golden Eagle Survey Protocol to determine when a survey for nests and/or roosts should be conducted. If nest(s) are present within 0.5 miles of the project area, NDOR will notify the Nebraska Game and Parks Commission and United States Fish and Wildlife Service, and construction will not commence prior to their approval.

Migratory Bird Treaty Act:

NDOR has developed an Avian Protection Plan (APP) to reduce conflicts between construction of NDOR projects and the laws governing migratory birds. This procedure is designed to protect and conserve avian populations and reduce avian conflicts through changes in project scheduling (i.e. tree clearing outside of primary nesting period), increased migratory bird surveys, and changes in project construction timelines. NDOR will utilize its APP to reduce conflicts with migratory birds on this project.

Fish and Wildlife Coordination Act:

A wetland determination has been completed for this project. Based on current project design, there will be no wetland or stream channel impacts on this project. This project will not require a Section 404 permit from the Corps of Engineers; therefore, coordination under FWCA is not required.

Conservation Conditions: *Responsible Party for conservation condition shown in parentheses.*

Listed below are the required Conservation Conditions that apply to this project. These measures are not subject to change without the prior written approval of the Federal Highway Administration. **Copy and paste the conditions listed below verbatim in the NEPA document, the Green Sheet, and in the contract documents:**

A-1 **Changes in Project Scope**. If there is a change in the project scope, the project limits, or environmental commitments, the NDOR Environmental Section must be contacted to evaluate potential impacts prior to implementation. Environmental commitments are not subject to change without prior written approval from the Federal Highway Administration. *(District Construction, Contractor)*

A-2 **Conservation Conditions**. Conservation conditions are to be fully implemented within the project boundaries as shown on the plans. *(District Construction, Contractor)*

A-3 **Early Construction Starts**. Request for early construction starts must be coordinated by the Project Construction Engineer with NDOR Environmental for approval of early start to ensure avoidance of listed species sensitive lifecycle timeframes. Work in these timeframes will require approval from the Federal Highway Administration and could require consultation with the USFWS and NGPC. *(District Construction, Contractor)*

A-4 **E&T Species**. If federal or state listed species are observed during construction, contact NDOR Environmental. Contact NDOR Environmental for a reference of federal and state listed species. *(NDOR Environmental, District Construction, Contractor)*

A-5 **Refueling**. Refueling will be conducted outside of those sensitive areas identified on the plans, in the contract, and/or marked in the field. *(Contractor)*

A-6 **Restricted Activities**. The following project activities shall, to the extent possible, be restricted to between the beginning and ending points (stationing, reference posts, mile markers, and/or section-township-range references) of the project, within the right-of-way designated on the project plans:

borrow sites, burn sites, construction debris waste disposal areas, concrete and asphalt plants, haul roads, stockpiling areas, staging areas, and material storage sites.

For activities outside the project limits, the contractor should refer to the Nebraska Game and Park Commission website to determine which species ranges occur within the off-site area. The contractor should plan accordingly for any species surveys that may be required to approve the use of a borrow site, or other off-site activities. The contractor should review Chapter 11 of the Matrix (on NDOR's website), where species survey protocol can be found, to estimate the level of effort and timing requirements for surveys.

Any project related activities that occur outside of the project limits must be environmentally cleared/permitted with the Nebraska Game and Parks Commission as well as any other appropriate agencies by the contractor and those clearances/permits submitted to the District Construction Project Manager prior to the start of the above listed project activities. The contractor shall submit information such as an aerial photo showing the proposed activity site, a soil survey map with the location of the site, a plan-sheet or drawing showing the location and dimensions of the activity site, a minimum of 4 different ground photos showing the existing conditions at the proposed activity site, depth to ground water and depth of pit, and the "Platte River depletion status" of the site. The District Construction Project Manager will notify NDOR Environmental which will coordinate with FHWA for acceptance if needed. The contractor must receive notice of acceptance from NDOR, prior to starting the above listed project activities. These project activities cannot adversely affect state and/or federally listed species or designated critical habitat. (NDOR Environmental, District Construction, Contractor).

A-7 **Waste/Debris**. Construction waste/debris will be disposed of in areas or a manner which will not adversely affect state and/or federally listed species and/or designated critical habitat. *(Contractor)*

A-8 **Post Construction Erosion Control.** Erosion control activities that may take place by NDOR Maintenance or Contractors after construction is complete, but prior to project close-out, shall adhere to any standard conservation conditions for species designated for the project area during construction. (NDOR Maintenance, District Construction, Contractor)

S-4 **Sensitive Areas.** Environmentally Sensitive Areas will be marked on the plans, in the field, or in the contract by NDOR Environmental for avoidance. (NDOR Environmental, District Construction)

Finescale Dace and **Northern Redbelly Dace:**

FSD,NRBD-2 Bridge deck debris will be captured and/or contained to prevent material from entering the channel. (District, Contractor)

Bald and Golden Eagle Protection Act:

- Suitable **Golden Eagle** nesting and/or roosting habitat exists within 0.5 miles of the Environmental Study Area. If construction will begin between February 1 and April 15, a nest survey must be completed at least 1 but not more than 14 days prior to construction. If construction will begin between April 15 and October 1, a nest survey completed in March is sufficient, as nests will likely already be constructed if nesting will occur that year. However, a nest survey may be completed anytime during this timeframe, as long as it is completed prior to construction. If golden eagles are nesting in the area, consultation with NGPC and USFWS will be required.