Biological Assessment PQS Memorandum

DATE 2/9/2016

TO Ryan Walkowiak, NEPA Project Manager

Cc Roger Yerdon, EPU Project Manager

FROM Melissa Marinovich, T&E Species Biologist

SUBJECT Deweese Spur North; STP-14-1(119); CN 42566
Threatened & Endangered Species Concurrence

The biological assessment final approval on: **2/9/2016**

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: **Northern Long-Eared Bat, Whooping Crane**

☐ 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: **U.S. Fish and Wildlife Service – Rainwater Basin Wetland Management District**

Description of Coordination: **FHWA sent the Biological Assessment to the acting project leader of the USFWS Rainwater Basin Wetland Management District for review and concurrence on 11/12/15. Brandon Jones, the acting project leader, responded in an email correspondence to Brooke Stansberry on 11/16/15 that they had no concerns. Brooke forwarded the email on to FHWA and NDOR on 11/17/15.**

Bald and Golden Eagle Protection Act:

This project was also reviewed for potential impacts to bald and golden eagles. NDOR believes the project site does not have appropriate habitat for eagles. Due to the lack of suitable habitat and information that there are no known bald eagle nests within the project area, NDOR has determined that there will be no impact to these species.

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 delineation was completed by Burns & McDonnell Engineering Company, Inc. wetland scientists in the field on August 12-14, 2013; however impacts are not yet available. Based on current design, this project will likely require a NPDES permit and Nationwide 14 Section 404 permit from the Corps of Engineers.

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-3 **Revegetation**. All permanent seeding and plantings (excluding managed landscaped areas) shall use species and composition native to the project vicinity as shown in the Plan for the Roadside Environment. However, within the first 16 feet of the road shoulder, and within high erosion prone locations, tall fescue or perennial ryegrass may be used at minimal rates to provide quick groundcover to prevent erosion, unless state or federally listed threatened or endangered plants were identified in the project area during surveys. If listed **plants** were identified during survey, any seed mix requirements identified during resource agency consultations shall be used for the project. *(NDOR Environmental)*

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)*

S-5 **Species Surveys.** If species surveys are required for this project, results will be sent by NDOR to the USFWS, NGPC, and if applicable COE. FHWA will be copied on submittals. *(NDOR Environmental, District Construction)*

Northern Long-Eared Bat:

NLEB-1 Tree clearing, bridge deck joint replacements over the bridge deck, bridge/>5-ft box-culvert removal activities will be scheduled to occur between October 1st – March 31st to avoid impacts to the northern long-eared bat roosting period. *(NDOR Environmental, Construction, Contractor)*

OR

NLEB-2 If tree clearing, bridge deck joint replacement over the bridge deck, or removal of bridge or >5-ft box-culvert structures occurs during the northern long-eared bat roosting period (April 1st – September 30th), NDOR personnel will perform surveys prior to the start of these activities at the following locations: ***the bridge over the Union Pacific Railroad tracks (Structure S014 02929) and the bridge over Big Sandy Creek (Structure S014 03182).*** If the species is absent, work may proceed. If the species is found, NDOR Environmental Section will consult with the USFWS, NGPC, and FHWA prior to the start of construction. *(NDOR Environmental, Construction, Contractor)*

Whooping Crane:

WC-1 Construction activities will not occur during Whooping Crane migration periods. (Spring migration: March 10 – May 10; and fall migration: September 16 – November 16). *(NDOR Environmental, Construction, Contractor)*

OR

WC-2 If construction activities occur during Whooping Crane migration periods (Spring migration: March 10 – May 10; and fall migration: September 16 – November 16), NDOR trained personnel, or a qualified biologist, will conduct surveys according to protocol at the following locations: ***from Mile Marker 26.50 to Mile Marker 27.00 (this includes the portion of the project corridor that is adjacent to the Bluewing Wildlife Management Area) and from Mile Marker 33.37 to Mile Marker 34.67 (this includes the portion of the project corridor that are adjacent to the Massie Federal Waterfowl Production Area and two sub-irrigated grasslands with shallow open water wetlands)***, **prior to the start of daily construction activities**. If species are present the District will notify the Contractor to stop work within 1/2 mile of the whooping crane and follow the protocol to determine when work can resume **(also not initiate work if species is found in the morning survey)**. Options for resuming work may include but are not limited to *(NDOR Environmental, Construction, Contractor)*:

- Construction activities are limited to the hours from 10:00 a.m. to 4:00 p.m. (CST) during the migration period, unless morning survey indicates Whooping Cranes are not present.
- If a whooping crane is observed during the survey within ½ mile of the project, but departs the area (further than ½ mile from the project) then work can resume. Document this departure according to protocol.

AND

WC-3 Herbaceous species used for re-seeding within ¼ mile of the following location: ***from Mile Marker 26.50 to Mile Marker 27.00 (this includes the portion of the project corridor that is adjacent to the Bluewing Wildlife Management Area) and from Mile Marker 33.37 to Mile Marker 34.67 (this includes the portion of the project corridor that are adjacent to the Massie Federal Waterfowl Production Area and two sub-irrigated grasslands with shallow open water wetlands)*** will be native grass or forb species. Native shrub or woody species used in restoration should reach no more than 4 feet in height at maturity. *(Design, NDOR Environmental)*

R-11 For the **whooping crane**, nighttime work with lights from March 10 - May 10 and September 16 - November 16 is not authorized. If nighttime work is required, the Contractor will notify the District and the District will request approval from NDOR Environmental Section at least 10 working days prior to construction so consultation with the USFWS, NGPC, and FHWA can be initiated. Approval from these agencies is required *(NDOR Environmental, District Construction, Contractor)*.

Marinovich, Melissa

From: Stansberry, Brooke <brooke_stansberry@fws.gov>
Sent: Tuesday, November 17, 2015 9:08 AM
To: Marinovich, Melissa; scott.stapp@dot.gov
Cc: Cunningham, Zach; Maiefski, Melissa
Subject: Fwd: Bio Assessment review - CN 42566, STP-14-1(119), Deweese Spur North

Follow Up Flag: Follow up
Flag Status: Completed

Please see Brandon's message. Thanks again for the continued coordination, it is much appreciated.

Brooke

Brooke Stansberry
Fish and Wildlife Biologist
Nebraska Field Office
U.S. Fish and Wildlife Service
9325 South Alda Road
Wood River, Nebraska 68883
Cell: 308-379-8554
Brooke_Stansberry@fws.gov
http://www.fws.gov/nebraskaes/nebraska.php

Duty station:
Nebraska Department of Roads
1500 Highway 2
Lincoln, Nebraska 68509

"Like the resource it seeks to protect, wildlife conservation must be dynamic, changing as conditions change, seeking always to become more effective."

--Rachel Carson

---------- Forwarded message ----------
From: **Jones, Brandon** <brandon_jones@fws.gov>
Date: Mon, Nov 16, 2015 at 10:16 AM
Subject: Re: Bio Assessment review - CN 42566, STP-14-1(119), Deweese Spur North
To: "Stansberry, Brooke" <brooke_stansberry@fws.gov>

Hi Brooke,

Everything looks pretty standard in the BA. I don't see any red flags that cause great concern with regards to impacting the WPA. I would agree that the roadside seeding to take place after construction needs to be a native seeding. Below is the link to NDOR's vegetation establishment handbook. Their seedings comprise of cool and warm native mixes determined best suited for the area that the work is to take place.

http://www.transportation.nebraska.gov/environment/guides/veg-manual.pdf

Thanks,

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Brandon Jones
Acting Project Leader
Rainwater Basin WMD
P.O. Box 8
Funk, NE 68940
Phone: 308-263-3000
Fax: 308-263-3001