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In Reply Refer to:

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DFW

February 29, 2008

Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Office of Economics, Environmental Analysis and Administration
Surface Transportation Board
Washington, D.C. 20423

Dear Ms. Rutson:

Thank you for your letter of February 14, 2008, received in our office on February 19, 2008, requesting consultation pursuant to section 7 of the Endangered Species Act (16 U.S.C. 1531-1544), as amended, in regard to the proposed construction and operation of the Arizona Eastern Railway (AZER) Safford Branch project and Gila River bridge crossing in Graham County, Arizona. The Surface Transportation Board requests concurrence from the U.S. Fish and Wildlife Service (FWS) that the proposed project may affect, but is not likely to adversely affect, the endangered southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher) and its critical habitat and the endangered razorback sucker (*Xyrauchen texanus*) and its critical habitat. Given our understanding of this project, we do not concur with your determination that the proposed action is not likely to adversely affect these species as discussed below.

Description of the Proposed Action

A description of the proposed action, including the conservation measures, is found in the Biological Assessment (BA) transmitted with your February 14, 2008, letter. In brief, the proposed action consists of the construction of a 12.4-mile railway spur from the existing 133.5-mile AZER line between Miami in Gila County, Arizona to Bowie in Cochise County, Arizona. The BA is focused primarily on an analysis of the effects of construction a 1,600-foot railway bridge across the Gila River. Fifteen bridge piers will be required, eleven of which will be located within the Gila River. A river training device will be constructed in the lowermost reaches of the San Simon River to protect the bridge's embankments. A temporary access road will be constructed.

Determination of Effects

Southwestern Willow Flycatcher and Razorback Sucker

The flycatcher is known to breed along the Gila River, and in the Safford Valley in particular (Dockens *et al.* 2006, Graber *et al.* 2007). The Gila River within the vicinity of the project area is critical habitat for the flycatcher, and contains the primary constituent elements for critical habitat. Flycatchers are not known to currently breed at the project site, but breeding occurs in up- and downstream reaches. The project site also serves as migration and stopover habitat.

Small or very small numbers of released razorback suckers may survive in the Gila River and Bonita and Eagle creeks. Fish may have also moved upstream into the San Francisco River. The BLM reported a large razorback sucker found in Bonita Creek in 1991. Fishes occurring at exceedingly low abundance are difficult to detect (Marsh *et al.* 2003). Given such uncertainty, there is a small possibility that razorback suckers may occur in intermittently and in immeasurably small numbers in the Gila River in the project area. The project area within the 100-year floodplain is critical habitat for the razorback sucker.

Based on the information you provided and our understanding of this project, we do not concur with your determination that the proposed action may affect, but is not likely to adversely affect the flycatcher and razorback sucker. We base this on the following:

- The placement of 11 bridge piers within the Gila River, as well as the emplacement of training structures and bank protection, will permanently halt the succession of riparian vegetation and fluvial processes for an area at least equal to the amount of channel occupied by the structures. The placement of the piers, training structures, and bank protection also has the potential to alter the geomorphology of the channel outside of the 500-foot wide right-of-way (ROW) defined in the BA.
- We are concerned that instream structures (piers) and bank protection will interfere with natural meander function and anticipated channel narrowing and increasing sinuosity (Wittler *et al.* 2002) that could otherwise benefit the recovery of the flycatcher and razorback sucker in the project area. We also note that Appendix A of the BA, entitled Draft Hydrology and Hydraulics Memorandum, was not included.
- The BA states that 7.3 acres of razorback sucker critical habitat will be temporarily disturbed, 1.8 acres of razorback sucker critical habitat will be permanently disturbed, and 0.8 acre of riparian vegetation will be removed. This does not include the aforementioned disturbance associated with the geomorphic effects of the bridge. These effects will directly and indirectly affect razorback sucker and flycatcher critical habitat and possibly individuals of either or both species during the life of the project.

- The proposed action includes both construction and operation of the railway, but the BA includes primarily an analysis of the construction effects to flycatchers, razorback suckers, and their respective critical habitat. The BA includes no description of the freight and materials that will be transported, though we assume they will primarily be related to mining (Arizona Eastern Railway 2006, Eastern Arizona Courier 2006). Ongoing operation of a railway includes a finite risk of the spilling of hazardous cargo, fuels, lubricants, etc. into the mainstems or watersheds of the Gila and San Simon rivers, including critical habitat. We, therefore, request that railway maintenance and spill response plans be submitted to us prior to the initiation of formal consultation.
- We are not able to ascertain if the railway bridge will be used to provide a crossing for other utility lines (such as natural gas, bulk fuels, water, electricity, etc.). If any such utility access is to be provided as part of the railway bridge, we request that the effects of such interrelated actions be included in a revision to the BA.

Conclusion

In light of our review, we encourage you to reconsider your effect determinations for these species and critical habitat. In order for us to concur with your determination that the proposed action is not likely to adversely affect flycatchers or razorback suckers, all effects must be insignificant, discountable, or wholly beneficial. Formal consultation, as was completed with the Federal Highway Administration on June 27, 2006, for the Eighth Avenue Bridge (File number: 22410-2006-F-0428) is strongly recommended. Should you determine that this project may adversely affect the above-mentioned species, we will initiate formal consultation at your request.

Your February 14, 2008, letter stated that an Environmental Assessment (EA) is being prepared for the proposed action and that the FWS would be added to the mailing list for this project. It would advantageous if the EA was transmitted with your reply to this correspondence. We have assigned log number 22410-2008-F-0190 to this project. Please refer to this number in future correspondence regarding this consultation.

We also encourage you to coordinate the review of this project with the Arizona Game and Fish Department. We appreciate your continued coordination. If you have any questions or if we can be of further assistance, please contact Jason Douglas (x226) or Sherry Barrett at (520) 670-6150 (x223).

Sincerely,



Steven L. Spangle
Field Supervisor

Ms. Victoria Rutson

4

cc: Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ
Regional Supervisor, Arizona Game and Fish Department, Tucson, AZ
U.S. Army Corps of Engineers, Regulatory Branch, Phoenix, AZ (Attn: Robert Dummer)
Mark Cochran, CH2M HILL, Tucson, AZ
Kim Otero, WestLand Resources, Tucson, AZ

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