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United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Nebraska Field Office
9325 South Alda Road
Wood River, Nebraska 68883

April 25, 2016

FWS-NE: 2016-148

Mr. Scott Stapp
Environmental Protection Specialist
Federal Highway Administration
100 Centennial Mall
Room 220
Lincoln, NE 68508

RE: Biological Assessment, Whitman East, Project Number: NH-2-2(112), Control Number: 61008, in Grant and Hooker Counties, Nebraska

Dear Mr. Stapp:

This responds to the April 20, 2016, e-mailed request for comments and concurrence from the U.S. Fish and Wildlife Service (Service) for the subject project. The Service has responsibility for conservation and management of fish and wildlife resources for the benefit of the American public under the following authorities: 1) Endangered Species Act of 1973 (ESA); 2) Fish and Wildlife Coordination Act; 3) Bald and Golden Eagle Protection Act; and 4) Migratory Bird Treaty Act. The National Environmental Policy Act requires compliance with all of these statutes and regulations. This project was prioritized by the Nebraska Department of Roads (NDOR) and the Federal Highway Administration (FHWA) on April 25, 2016.

The Service has special concerns for endangered and threatened species, migratory birds, and other fish and wildlife and their habitats. Habitats frequently used by fish and wildlife species are wetlands, streams, riparian (streamside) woodlands, and grasslands. Special attention is given to proposed developments that include modification of wetlands, stream alteration, loss of riparian habitat, or contamination of habitats. When this occurs, the Service recommends ways to avoid, minimize, or compensate for adverse effects to fish and wildlife and their habitats.

ENDANGERED SPECIES ACT

Pursuant to section 7(a)(2) of ESA, every federal agency, shall in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated

critical habitat. If a proposed project may affect federally listed species or designated critical habitat, section 7 consultation is required with the Service. It is the responsibility of the federal action agency to fully evaluate all potential effects (direct and indirect) that may occur to a listed species and critical habitat in the action area. The federal agency provides their effects determination to us for concurrence. If federally listed species and/or designated/proposed critical habitat would be adversely affected by implementation of the project, the federal agency will need to formally request further section 7 consultation with the Service prior to making any irretrievable or irreversible commitment of federal funds (section 7(d) of ESA), or issuing any federal permits or licenses.

This project proposes to resurface approximately 16-miles of N-2, fill two culverts, and extend two additional culverts to accommodate changes in the foreslope. The project begins at Mile Marker 159.05, within Whitman and extends to Mile Marker 175.04, approximately nine miles west of Mullen. Construction activities identified in this assessment include the following: clearing and grubbing (non-woody vegetation), concrete pavement repair, culverts new, replacement, extension, repair—perennial, curb/flume, earth shoulder construction, erosion control (barriers, erosion checks, inlet/outlet protection, mulching, rolled erosion & vegetation), grading outside the hingepoint, guardrail repair with soil disturbance, milling, pavement marking, pavement removal, paving, resurfacing, rock or gravel surfacing, stream channel impact—intermittent/perennial, survey and staking. The proposed project will not need a 404 Permit; however, non-jurisdictional wetlands will be impacted. As of April 25, the project will result in 0.16 acres of permanent wetland impacts; however, NDOR has proposed to offset these unavoidable impacts by debiting 0.16-acres from the Rose Wetland Mitigation Bank. For the project, FHWA/NDOR has proposed to implement conservation conditions for the federally and state listed endangered Whooping crane (*Grus americana*), American burying beetle (*Nicrophorus americanus*), the state listed endangered Finescale dace (*Phoxinus neogaeus*) and Northern redbelly dace (*Phoxinus eos*). In addition, FHWA/NDOR has developed an Avian Protection Plan for ways to avoid and minimize a project's potential impacts to migratory birds that will be implemented into projects when applicable.

Based on the information that was submitted, the Service concurs that the proposed project may affect but is not likely to adversely affect federally listed species and/or critical habitat within the limits-of-construction (LOCs). However, should changes to the proposed project occur (i.e. additional direct/indirect effects are identified), or new information regarding federally listed species and/or critical habitat become available, this determination is no longer valid. Further section 7 consultation with the Service will be necessary.

All federally listed species under ESA are also State-listed under the Nebraska Nongame and Endangered Species Conservation Act. However, there are also State-listed species that are not federally listed. To determine if the proposed project may affect State-listed species, the Service recommends that the project proponent contact Michelle Koch (michelle.koch@nebraska.gov), Carey Grell (carey.grell@nebraska.gov), or Ryan Joe (ryan.joe@nebraska.gov), Nebraska Game and Parks Commission, 2200 N. 33rd Street, Lincoln, NE 68503-0370.

The Service appreciates the opportunity to provide comments on this proposed project. Should you have any questions regarding these comments, please contact Ms. Brooke Stansberry within our office at Brooke_Stansberry@fws.gov or at (308) 382-6468, extension 207.

Sincerely,

Eliza Hines
Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Michelle Koch)
NGPC; Lincoln, NE (Attn: Carey Grell)
NGPC; Lincoln, NE (Attn: Ryan Joe)
NDOR; Lincoln, NE (Attn: Zach Cunningham)
NDEQ; Lincoln, NE (Attn: Robert Parker)