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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

November 25, 2015

FWS-NE: 2016-050

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

RE: Biological Assessment, Batched I-80 Automated Gates and CCTV, in Buffalo, Cheyenne, Dawson, Hall, Hamilton, Kimball, Lincoln and York Counties, Nebraska, Project Numbers: ITS-NH-80-5(79), ITS-NH-80-7(162), ITS-NH-80-1(194) & ITS-NH-80-4(145), Control Numbers: 42772, 42773, 51553, & 61606

Dear Mr. Stapp:

This responds to the November 9, 2015, 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 November 17, 2015.

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 install and deploy automated gates and CCTV cameras on I-80 entrance ramps at several locations for emergency closures of the interstate within NDOR Districts 4, 5, and 6. Construction activities identified in this assessment include the following: clearing and grubbing (non-woody vegetation and trees and shrubs), erosion control—vegetation, lighting/ traffic and pedestrian signals/DMS with soil disturbance, signs with soil disturbance, and underground utility conduit installation. The proposed project may need a 404 Permit and also obtain borrow material for the construction. As of November 24, wetland impacts were not anticipated. If wetlands will be impacted or the need for an Individual Permit arises, the Service recommends further coordination. For the project, FHWA/NDOR has proposed to implement conservation conditions for the federally and state endangered Whooping crane (*Grus americana*), Interior least tern (*Sternula antillarum athalassos*), the federally and state listed threatened Piping plover (*Charadrius melodus*), the state listed endangered Swift Fox (*Vulpes velox*), and the state listed threatened Mountain Plover (*Charadrius montanus*).

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. direct/indirect effects are identified, off-site contractor activities such as borrow, staging, or waste sites are identified), Platte River depletions 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. The species sited in the project's biological assessment could be impacted by off-site construction activities within or outside of the 5-mile action area surrounding the LOCs (July 31, 2009, letter to FHWA). If such contractor activities as haul roads, staging, borrow or waste are identified as necessary for the proposed project, the Service should be contacted and the following information should be submitted to the Service for further section 7 consultation:

1) an aerial photo showing the proposed activity site
2) a soil survey map with the location of the activity site
3) a plan-sheet or drawing showing the location and dimensions of the activity site, identify the depth to ground water and depth of the pit

4) at a minimum, four different ground photo views showing the existing conditions at the proposed site
5) evaluation of the proposed impacts to federally listed species from the offsite construction activities
6) post-construction restoration plan for the disturbed site
7) pre/post construction report

Additionally, the contractor should be made aware that potential species surveys (prior to the actual use of the site) may be necessary for any off site activities.

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: Melissa Marinovich)
NDOR; Lincoln, NE (Attn: Zach Cunningham)
USACE; Omaha, NE (Attn: Phil Rezac)
USACE; Omaha, NE (Attn: Adam Nebel)
NDEQ; Lincoln, NE (Attn: Jason Garber)