

# WYOMING

## TEMPLATE BIOLOGICAL ASSESSMENT & REQUEST FOR FORMAL SECTION 7 CONSULTATION

Text shown in blue should be provided by the applicant

[DATE]

[FROM FEDERAL ACTION AGENCY  
TO U.S. FISH & WILDLIFE SERVICE]

This letter contains the Biological Assessment addressing potential impacts from operation of the [Project] on federally-listed species and designated critical habitats. With this submission, we are requesting initiation of Formal Consultation under Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (“ESA”), concerning the whooping crane (*Grus americana*), interior least tern (*Sternula antillarum*), northern Great Plains population of the piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*) (collectively referred to as the “target species”), and designated critical habitat of the whooping crane. We further request initiation of Formal Consultation for the western prairie fringed orchid (*Platanthera praeclara*), [include other non-target listed species or critical habitats, as needed]. We have determined that the Project is not likely to adversely affect the American burying beetle (*Nicrophorus americanus*) and will have no effect on the Eskimo curlew (*Numenius borealis*).

[Briefly describe: (1) Project; (2) Applicant; (3) Project location; and (4) Federal action (e.g., permit or authorization) associated with the Project.]

### For an Existing Water-Related Activity

Based on a determination by the Wyoming State Engineer’s Office (SEO), this project is an existing water-related activity which will not increase depletions to the Platte River system and is covered by the Program’s Wyoming Depletions Plan. A copy of the determination received from the SEO is attached to this biological assessment.

#### Description of water use should include:

- Location of Use (e.g., the service district, the county, the irrigation district, the industrial facility)
- Source of Water (e.g., water from X wells located in Y county providing up to Z acre-feet of supply annually; X acre-feet of storage rights from Y reservoir)
- Use of Water (e.g., approximately X domestic water taps, X acres of irrigated cropland, operation of an X-megawatt power-generation plant, up to X miles of pipeline hydrostatic testing, etc.)

Note: Depletions to Platte River flows (if any) associated with existing water-related activities covered by the Wyoming Depletion Plan do not need to be estimated.

### For a New Water-Related Activity

Based on a determination by the Wyoming State Engineer’s Office (SEO), this project is a new water-related activity which [will not result in new depletions] [or] [will result in new depletions to the Platte River Basin requiring mitigation in order to be covered by the Program’s Wyoming Depletions Plan]. A copy of the

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determination received from the SEO is attached to this biological assessment.

Description of water use should include:

- Location of Use (e.g., the service district, the county, the irrigation district, the industrial facility)
- Source of Water (e.g., water from X wells located in Y county providing up to Z acre-feet of supply annually; X acre-feet of storage rights from Y reservoir)
- Use of Water (e.g., approximately X domestic water taps, X acres of irrigated cropland, operation of an X-megawatt power-generation plant, up to X miles of pipeline hydrostatic testing, etc.)

Description of water replacement (mitigation) should include:

- A description of the mitigation measures agreed upon to comply with Wyoming's Plan (or with the Federal Depletion Plan). A copy of the corresponding Platte River Recovery Agreement between the project proponent and the State of Wyoming may be provided to meet this information need.

The Platte River Recovery Implementation Program (PRRIP or Program), established in 2006, is implementing actions designed to assist in the conservation and recovery of the target species and their associated habitats along the central and lower Platte River in Nebraska through a basin-wide cooperative approach agreed to by the States of Wyoming, Nebraska, and Colorado and the U.S. Department of the Interior [Program, 2006; Section I.A.1.]. The Program addresses the adverse impacts of existing and certain new water related activities on the Platte River target species and associated habitats, and provides ESA compliance<sup>1</sup> for effects to the target species and whooping crane critical habitat from such activities including avoidance of any prohibited take of such species. [Program, 2006; Section I.A.2 & footnote 2.]. The State of Wyoming is in compliance with its obligations under the Program.

For Federal actions and projects participating in the Program, the Platte River Recovery Implementation Program Final Environmental Impact Statement (U.S Department of Interior, 2006) and supplemental Environmental Assessment and Finding of No Significant Impact (2018), as well as the June 16, 2006 programmatic biological opinion (PBO) and the August 27, 2018 Supplemental biological opinion (collectively referred to as the PBOs) serve as the description of the environmental baseline and environmental consequences for the effects of the Federal actions on the listed target species, whooping crane critical habitat, and other listed species in the central and lower Platte River addressed in the PBOs. These documents are hereby incorporated into this Biological Assessment by this reference.

Table II-1 of the Supplemental biological opinion (pages 6-8) contains a list of species and critical habitat in the action area, their status, and the Service's determination of the effects of the Federal action analyzed in the PBOs, including the continued operation of existing and certain new water-related activities. The Service determined in the PBOs that the continued operation of existing and certain new water-related activities may adversely affect but would not likely jeopardize the continued existence of the endangered whooping crane, interior least tern, and pallid sturgeon, or the threatened northern Great Plains population of the piping plover.

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<sup>1</sup> "ESA Compliance" means: (1) serving as the reasonable and prudent alternative to offset the effects of water-related activities that FWS found were likely to cause jeopardy to one or more of the target species or to adversely modify critical habitat before the Program was in place; (2) providing offsetting measures to avoid the likelihood of jeopardy to one or more of the target species or adverse modification of critical habitat in the Platte River basin for new or existing water-related activities evaluated under the ESA after the Program was in place; and (3) avoiding any prohibited take of target species in the Platte River basin.

Further, the Service found that the continued operation of existing and certain new water-related activities may adversely affect but would not likely jeopardize the threatened bald eagle and western prairie fringed orchid associated with the central and lower reaches of the Platte River in Nebraska, and was not likely to destroy or adversely modify designated critical habitat for the whooping crane. The bald eagle was subsequently removed from the federal endangered species list on August 8, 2007.

The Service also determined that the PBOs Federal Action, including the continued operation of existing and certain new water-related activities, would have no effect to the endangered Eskimo curlew. There has not been a confirmed sighting since 1926 and this species is believed to be extirpated in Nebraska. Lastly, the Service determined that the PBOs Federal Action, including the continued operation of existing and certain new water-related activities, was not likely to adversely affect the endangered American burying beetle.

[Insert applicable BA text describing potential affects to non-target listed species, their critical habitats, if any, and/or site-specific affects to any listed species/critical habitat]

#### INSERT APPLICABLE LANGUAGE BELOW:

The above-described Project operations qualify as an “existing water related activity” because they are surface water or hydrologically connected groundwater activities implemented on or before July 1, 1997, within the intent and coverage of the Program. [Program, 2006; Section I.A. footnote 3]. The existing water related activity conforms to the criteria in Section III of Chapters 2 or 3 of the Depletions Plan, Platte River Basin, Wyoming (Wyoming’s Depletions Plan [Program, Attachment 5, Section 7]) and:

1. The existing water related activity is operated on behalf of Wyoming water users;
2. The State Coordinator has determined that the activity qualifies as an existing water related activity; and
3. If required by the State Coordinator, the Applicant has signed a Wyoming Recovery Agreement to document any mitigation requirements need to qualify as an existing water activity.

-AND/OR-

The above-described Project operations qualify as a “new water related activity” because such operations constitute new surface water or hydrologically connected groundwater activities which may affect the quantity or timing of water reaching the associated habitats of the target species implemented after July 1, 1997. [Program, 2006; Section I.A. footnote 3]. The new water related activity conforms to the criteria in Section II of Chapters 2 or 3 of Wyoming’s Depletions Plan and:

1. The new water related activity is operated on behalf of Wyoming water users;
2. The new water related activity can be completed without exceeding an existing water related baseline or benchmark as described in Wyoming’s Depletions Plan or the Applicant has requested, and the State of Wyoming has agreed, that the depletions resulting from the new water related activity will be mitigated with water from the Wyoming Water Bank; and
3. The Applicant has signed a Wyoming Recovery Agreement with the Wyoming State Coordinator to document the requirements to qualify for the status described in 2. above.

[Note: It is understood that a Project may include existing and new water related activities. In these situations, the activities within the Project must be categorized as “existing” or “new” and biological assessment will address both categories.]

Accordingly, the impacts of this activity to the target species, whooping crane critical habitat, and other listed species in the central and lower Platte River addressed in the PBOs are covered and offset by operation of Wyoming’s Depletions Plan as part of the PRRIP.

The Applicant intends to rely on the provisions of the Program to provide ESA compliance for potential impacts to the target species and whooping crane critical habitat. Insert the [Federal Agency] intends to require, as a condition of any approval, that the Applicant fulfill the responsibilities required of Program participants in Wyoming. The [Federal Agency] also intends to retain discretionary Federal authority for the Project, consistent with applicable regulations and Program provisions, in case reinitiation of Section 7 consultation is required.

This letter addresses consultation on all listed species and designated critical habitat in Nebraska, including the referenced Platte River target species and whooping crane critical habitat. Potential impacts from construction and operation of the Project to any other federally-listed threatened or endangered species and designated critical habitats will be addressed within the applicable biological opinion prepared by the Service, in accordance with the ESA.

#### **References:**

Platte River Recovery Implementation Program Document. 2006.

U.S. Department of the Interior. 2006. Platte River Recovery Implementation Program Final Environmental Impact Statement.

U.S. Fish and Wildlife Service. 2006. Biological Opinion on the Platte River Recovery Implementation Program.

U.S. Department of the Interior. 2018. Platte River Recovery Implementation Program First Increment Extension Final Environmental Assessment.

U.S. Fish and Wildlife Service. 2018. Supplemental Biological Opinion on the Platte River Recovery Implementation Program First Increment Extension.

/FROM FEDERAL ACTION AGENCY/