



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Colorado Division**

March 12, 2019

12300 W. Dakota Ave., Ste. 180  
Lakewood, Colorado 80228  
720-963-3000

Drue L. DeBerry  
U.S. Fish and Wildlife Service, Ecological Services  
P.O. Box 25486, DFC, (MS 65412)  
Denver, Colorado 80225-0486

VIA EMAIL ONLY

**Attn:** Alison Michael

**Subject: Request for extension of the Programmatic Biological Opinion regarding Platte River Species**

Dear Mr. DeBerry:

On April 4, 2012, the Federal Highway Administration (FHWA) received a programmatic Biological Opinion (PBO) from the U.S. Fish and Wildlife Service (USFWS) in regard to the effects the Colorado Department of Transportation (CDOT) have on federally listed species as a result of depletions to the South Platte River Basin (TAILS: 06E24000-2012-F-0328). The water is used by CDOT for construction activities such as the rehabilitation and reconstruction of existing roadways and bridges, and may occasionally be used for the construction of new roadways. The PBO recognizes that the depletions being addressed do not include water used for routine maintenance activities and that most of the water used is supplied through municipal sources. The PBO falls under the umbrella of the Platte River Recovery Implementation Program (PRRIP), which addresses the flow volume and timing in the central and lower reaches of the Platte River in Nebraska, and is dependent on it for compliance with the Endangered Species Act.

According to the 2012 PBO, the first stage of the PRRIP is due to be completed on December 31, 2019. It is our understanding that the PRRIP will be extended for 13 years from January 1, 2020 until December 31, 2033. Under the assumption the PRRIP will be extended, FHWA would like to request that the PBO be extended for an additional 13 years and that 2,200 AF of water be allocated for the construction related activities of CDOT. This amount of water is based on the average annual amount allocated in the current PBO, extended to 13 years.

Many construction projects carried out by FHWA and CDOT involve months, and sometimes years, of planning. Because of this lengthy process, it is often required to have the legal obligations attended to well in advance of the actual construction. In order to avoid any delays in project development due to water depletions, FHWA would like to make this request now, as opposed to waiting until the 2012 PBO expires at the end of this year.

In our annual report required by the PBO it was estimated that CDOT's use of water varies from a high of 246.8 AF to a low of 64.5 AF. The high usage years are often due to emergency repairs, such as the flood in 2013, or very large planned projects such as the construction of the Veterans' Memorial Tunnels in 2016. During the last 7 years (2012 – 2018) CDOT's water use in the South Platte Basin has averaged 139.10 AF/year. If CDOT continues to use water at that rate, a total of 1112.8 AF will have been used by the end of 2019, which is 239.2 AF less than allocated. However, FHWA would like to request 2,200 AF be allocated for the time period of 2020 – 2033 with the expectation that construction will continue near its present rate but factoring in several large projects on I-25 and I-70 and allowing for unforeseen emergencies.

The project location continues to be the same, all CDOT rights-of-way within the South Platte River Basin. If consultation is required by an individual project for effects other than those caused by South Platte River depletions, those will be addressed on a project-by-project basis. Due to habitat loss and degradation, FHWA has determined that water depletions from this basin will continue to have an adverse effect on the Whooping Crane (*Grus americana*), interior population of the Least Tern (*Sternula antillarum*), northern Great Plains population of the Piping Plover (*Charadrius melodus*), the pallid sturgeon (*Scaphirhynchus albus*), the western prairie fringed orchid (*Platanthera praeclara*), and designated critical habitat of the Whooping Crane. 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*).

CDOT intends to rely on the provisions of the PRIPP to provide ESA compliance for potential impacts to the target species and Whooping Crane critical habitat. FHWA intends to require, as a condition of any approval, that CDOT fulfill the responsibilities required of PRIPP participants in Colorado, which includes participation in the South Platte Water Related Activities Program, Inc. (SPWRAP). CDOT, as part of the State of Colorado, is currently a member of SPWRAP. FHWA also intends to retain discretionary Federal authority for the implementation of the Federal-Aid Highway Program, consistent with applicable regulations and Program provisions, in the case reinitiation of Section 7 consultation is required.

In order to track the Project's on-going use of water, FHWA and CDOT intend to continue reporting, by February 1 each year to the US Fish and Wildlife Service on the previous year's water use based on the same calculation method used for developing the estimated water use for the years 2012-2019. In addition, this report will include a running total of water use beginning in 2020 and compare that to the amount requested in this letter (2,200 acre-feet in total). If a trend develops that indicates that the Project will exceed 2,200 acre-feet before the end of 2033, FHWA will reinitiate Section 7 consultation.

Discussions with officials from PRIPP and SPWRAP indicate that both entities expect their respective programs to be extended for the foreseeable future. However, because CDOT relies on both to meet their Section 7 obligations, if either group's program is not extended beyond 2019, FHWA will initiate formal consultation with the USFWS.

At this time, FHWA would like to request that the current PBO be extended for an additional 13 years (2020-2033) and that 2,200 AF of water from the South Platte River

Basin be allocated to CDOT for highway construction activities. All conditions outlined in the current PBO will continue to apply.

If you have further questions regarding this matter, please contact Ms. Stephanie Gibson, of this office, at 720-963-3013.

Sincerely,

**STEPHANIE**  
**P GIBSON**

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John M. Cater  
Division Administrator

By:  
Stephanie Gibson  
Environmental Program Manager

Cc: David Singer (CDOT)  
Jeff Peterson (CDOT)



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Colorado Ecological Services

IN REPLY REFER TO:  
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Denver, Colorado 80225-0486

Western Slope:  
445 W. Gunnison Avenue  
Suite 240  
Grand Junction, Colorado 81501-5711

TAILS: 06E24000-2019-F-0553

March 29, 2019

Stephanie Gibson  
Federal Highway Administration – Colorado Division  
12300 West Dakota Avenue, Suite 180  
Lakewood, Colorado 80228

Dear Ms. Gibson:

On April 4, 2012, the U.S. Fish and Wildlife Service (Service) concluded that the combination of existing and new depletions to the Platte River system above the Loup River confluence resulting from the Federal Highway Administration Federal-Aid Highway Program's (FAHP) highway construction activities is consistent with the Tier 1 Programmatic Biological Opinion (PBO) for effects to listed species and critical habitat associated with the Platte River in Nebraska (06E24000-2012-F-0328). Typical depletions include water used for mixing of concrete, compaction of road base, and dust suppression. The Colorado Department of Transportation (CDOT) and the Colorado Division of FHWA share responsibility for oversight of the FAHP in Colorado. The consultation analyzed the effects of the average use of 169 acre-feet of water per year for a portion of the Platte River Recovery Implementation Program's first 13-year increment, which concludes December 31, 2019. Our review was performed consistent with our authority under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). Our analysis concluded that the project would not jeopardize the continued existence of the endangered whooping crane (*Grus americana*), the interior least tern (*Sternula antillarum*), the pallid sturgeon (*Scaphirynchus albus*), the threatened northern Great Plains population of the piping plover (*Charadrius melodus*), or the western prairie fringed orchid (*Platanthera praeclara*). The action is also not likely to destroy or adversely modify designated critical habitat for the whooping crane.

On March 12, 2019, we received your request to extend the project for the next 13-year increment and to allocate 2,200 acre-feet of water for CDOT's construction-related impacts. This amount of water is based on the average annual amount currently allocated (i.e., 169 acre-feet) and calculated for 13 years.

Given that the amount of water depleted is not expected to increase and that the Department of the Interior, acting through the Service and Bureau of Reclamation, continues to implement all pertinent Reasonable and Prudent Measures and Terms and Conditions stipulated in the Tier 1 PBO Incidental Take Statement (pages 309-326 of the PBO) to minimize the anticipated incidental take of federally listed species, we continue to expect the impacts from the project will not result in jeopardy to the species.

Please note that reinitiation of consultation will be required if:

1. New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation;
2. The action is subsequently modified in a manner that causes an adverse effect to the listed species or critical habitat that was not considered in this consultation; or
3. A new species is listed or critical habitat designated that may be affected by the action.

We appreciate your submitting this report to our office for review and comment. If the Service can be of further assistance, please contact Alison Deans Michael of my staff at [alison\\_michael@fws.gov](mailto:alison_michael@fws.gov) or (303) 236-4758.

Sincerely,

**DRUE  
DEBERRY**

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Drue L. DeBerry  
Colorado and Nebraska Field Offices Supervisor

ec: FWS, R6 (Tom Econopouly)  
FWS, Nebraska Field Office (Matt Rabbe)  
CDOT, HQ (Jeff Peterson)