



# United States Department of the Interior

U.S. Fish and Wildlife Service

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In reply refer to:

AESO/SE

02EAAZ00-2015-I-0276

March 9, 2015

## Memorandum

To: State Director, Bureau of Land Management, Phoenix, Arizona

From: Field Supervisor

Subject: Concurrence for Arizona Department of Transportation Herbicide Treatments along State Highways on BLM-Administered Lands in Arizona

Thank you for your January 16, 2015, correspondence. This letter represents our review of your proposal to authorize the Arizona Department of Transportation (ADOT) to conduct annual herbicide treatments on roadway easements through Bureau of Land Management (BLM) lands in Arizona in compliance with section 7 of the Endangered Species Act (Act), as amended (16 U.S.C. 1531 et seq.). We received your correspondence and the December 24, 2014 Biological Assessment (BA) on January 23, 2014. The BA is tiered to the *Vegetation Treatments on BLM Lands in 17 Western States Final Biological Assessment* (BLM 2007) and the *Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States Final Programmatic Environmental Impact Statement* (PEIS) (BLM PEIS 2007).

You have concluded that the proposed action may affect, but is not likely to adversely affect 24 species listed as threatened or endangered, or proposed for listing; and designated or proposed critical habitats for nine species (Table 1). You also concluded “no effect” for 43 threatened or endangered species, designated critical habitat for 21 species, and proposed critical habitat for four species. Species with “no effect” determinations do not require our review and therefore, are not considered further.

**Table 1.** Listed species and designated or proposed critical habitat that occurs in the action area.

Common Name	Scientific Name	Status	Critical Habitat	Occurrence in Project Area
Arizona cliffrose	<i>Purshia subintegra</i>	E	No	US 93
Arizona hedgehog cactus	<i>Echinocereus triglochidiatus</i> var. <i>arizonicus</i>	E	No	SR 77
Bonytail chub	<i>Gila elegans</i>	E	Yes	SR 95, SR 955
Brady pinchusion cactus	<i>Pediocactus bradyi</i>	E	No	US 89A
California condor	<i>Gymnogyps californianus</i>	EXPN	No	I-15, SR 389, US 89A, US 93, I-40, SR 66

Common Name	Scientific Name	Status	Critical Habitat	Occurrence in Project Area
Chiricahua leopard frog	<i>Lithobates chiricahuensis</i>	T	Yes	SR 80, SR 83, SR 90
Fickeisen plains cactus	<i>Pediocactus peeblesianus</i> var. <i>fickeiseniae</i>	E	Proposed	US 89A
Gierisch mallow	<i>Sphaeralcea gierischii</i>	E	Yes	I-15
Holmgren (Paradox) milk-vetch	<i>Astragalus holmgreniorum</i>	E	Yes	I-15
Huachuca water umbel	<i>Lilaeopsis schaffneriana</i> ssp. <i>recurve</i>	E	Yes	SR 82, SR 90
Mojave desert tortoise	<i>Gopherus agassizii</i>	T	Yes	I-15
Narrow-headed gartersnake	<i>Thamnophis rufipunctatus</i>	T	Proposed	US 191, SR 75, US 70
Northern Mexican gartersnake	<i>Thamnophis eques megalops</i> )	T	Proposed	SR 82, SR 83, SR 90, SR 92, US 191, SR 75, SR 77
Ocelot	<i>Leopardus pardalis</i>	E	No	None recorded
Peebles Navajo cactus	<i>Pediocactus peeblesianus</i> var. <i>peeblesianus</i> )	E	No	I-40
Pima pineapple cactus	<i>Coryphantha scheeri</i> var. <i>robustispina</i>	E	No	SR 83, SR 86, SR 286
Razorback sucker	<i>Xyrauchen texanus</i>	E	Yes	SR 95, SR 955
Siler pincushion cactus	<i>Pediocactus sileri</i>	T	No	SR 89, SR 389
Sonoran pronghorn	<i>Antilocapra americana sonoriensis</i>	EXPN	No	I-8, I-10, SR 85, SR 86, SR 238, SR 286, US 95
Southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	E	Yes	US 93, SR 177, SR 77, US 60, I-15
Virgin River chub	<i>Gila seminuda</i>	E	Yes	I-15
Woundfin	<i>Plagopterus argentissimus</i>	EXPN	Yes	I-15
Yellow-billed cuckoo	<i>Coccyzus americanus</i>	T	Proposed	I-15, SR 77, SR 82, SR 90, SR 177, US 60, US 93
Yuma clapper rail	<i>Rallus longirostris yumanensis</i>	E	No	I-15, SR 95, SR 955

Status: E = Endangered, T = Threatened, EXPN = Experimental, Non-Essential Population  
 Occurrence in Project Area: US = United States Highway, I = Interstate, SR = State Route

### Description of the Proposed Action

A complete description of the proposed action is found in your December 24, 2014, BA. The BLM in association with Federal Highway Administration proposes to allow the use of approved herbicides under the PEIS Record of Decision (BLM PEIS 2007) to reduce the incidence and spread of undesirable vegetation within ADOT right-of-ways (ROW) that cross through BLM lands. Areas within ADOT ROWs would be treated as part of federally-funded projects under the Federal-Aid Highway Program and during routine state-funded maintenance work. The project's action area is the linear ADOT easement and may vary from 50 feet to 400 feet wide, occurring as segments along roadways throughout the State (Figure 1).

ADOT would provide the necessary information to complete Pesticide Use Proposals (PUPs) describing proposed activities and chemicals to be used within the ADOT ROWs. Only federally registered and BLM approved herbicides will be used. Herbicides and adjuvants will be used in accordance with product labeling and the respective Safety Data Sheet. Herbicide application will occur in accordance with Arizona Department of Agriculture Office of Pest Management regulations, as well as the *Recommended Protection Measures for Pesticide Applications Developed for Region 2 of the United States Fish and Wildlife Service* (RPMPA) (USFWS 2007). ADOT would coordinate at least annually with the BLM State Pesticide Coordinator and BLM State Deputy Director to evaluate the procedure for developing, reviewing and updating PUPs for herbicide use within ADOT ROWs.

Herbicides could be administered using mechanized ground applications such as spray boom or wand attached to a truck or off-highway vehicle; or manual applications using backpack sprayers, direct application to the vegetation, or applying solid granules to the soil. Herbicide formulations may include solid formulations such as granules, pellets, or treated seeds, dust formulation, liquid formulations or ultra-low volume formulations which are applied at a rate of ½ gallon or less per acre. The herbicide mixture could include an inert marker dye to ensure complete coverage and confirm that non-target species were not sprayed. Appropriately-sized nozzles and tips would be used to minimize overspray onto native vegetation. Information and instructions on the herbicide label would be followed. All herbicide active ingredients approved for use on BLM lands are listed under the PEIS Record of Decision (BLM PEIS 2007) and are registered by the United States Environmental Protection Agency.

Noxious and invasive weeds commonly found along roadways in Arizona include, but are not limited to, various thistle-like flowering plants (*Centaurea* spp.), Russian thistle (*Salsola kali*), Dalmatian toadflax (*Linaria dalmatica*), mullein (*Verbascum thapsus*), and camelthorn (*Alhagi maurorum*); and grasses such as buffelgrass (*Pennisetum ciliare*), cheatgrass (*Bromus tectorum*), fountain grass (*Pennisetum setaceum*), and Johnsongrass (*Sorghum halapense*). This list is not inclusive. Additional species of noxious and/or invasive weeds may be observed and treated during the implementation of this project.

### Conservation Measures

The proposed action includes several general conservation measures, as well as a number of specific conservation measures designed for each of the listed species that occurs in the action area. These conservation measures are derived from the BLM PEIS Record of Decision (BLM 2007a), *Vegetation Treatments on BLM Lands in 17 Western States Final Biological Assessment* (BLM 2007b), and *Recommended Protection Measures for Pesticide Applications in Region 2 of the U. S. Fish and Wildlife Service* (USFWS 2007). Additionally, the Standard Operating Procedures for herbicide application that were developed in the BLM PEIS to minimize risks to the environment during herbicide treatment programs are included (BLM PEIS 2007). All of the general conservation measures and specific conservation measures are part of the proposed action and are referenced herein.

General conservation measures include contacting our office within 60 days prior to herbicide treatment to determine if the habitat is occupied and if a pretreatment survey is required.

Specific conservation measures consist of pretreatment surveys, buffer zones and/or avoidance distances that will separate areas where herbicides will be applied from areas where listed species and/or their habitat occur, and incorporate Ecological Risk Assessments for application risks to aquatic and terrestrial fish and wildlife species. Each species addressed by the RPMPA has one or more buffer zones that will be applied according to various herbicide formulations, toxicity levels, application methods, and other factors. The buffer zones were developed primarily to protect the listed species or its habitat from the potential toxicity of the herbicides, but were also designed to prevent disturbance where needed (e.g., do not conduct herbicide treatments during the reproductive season) based on the type of application. In the event pretreatment surveys have not been conducted for plants or the survey was not conducted during the appropriate survey season, additional habitat mapping will be done in the action area and the appropriate specific and herbicide-specific conservation measures would be applied to the delineated suitable habitat.

## DETERMINATION OF EFFECTS

We concur with your determination that the proposed action may affect, but is not likely to adversely affect, the species or proposed or critical habitat listed in Table 1. We base this conclusion on the project design, and the general and specific conservation measures that are part of the proposed action. Implementation of the buffer zones, avoidance distances, seasonal restrictions, pretreatment surveys, and coordination with our office prior to treatment for some listed species is expected to eliminate adverse effects to the species and their habitats, and their critical habitat. Any residual direct or indirect effects are insignificant and discountable.

Certain project activities may also affect species protected under the Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. sec. 703-712) and/or bald and golden eagles protected under the Bald and Golden Eagle Protection Act (BGEPA). The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when authorized by the FWS. The BGEPA prohibits anyone, without a FWS permit, from taking (including disturbing) eagles, and including their parts, nests, or eggs. If you think migratory birds and/or eagles will be affected by this project, we recommend seeking our technical assistance to identify available conservation measures that you may be able to incorporate into your project.

For more information regarding the MBTA and BGEPA, please visit the following websites. More information on the MBTA and available permits can be retrieved from <http://www.fws.gov/migratorybirds> and <http://www.fws.gov/migratorybirds/mbpermits.html>. For information on protections for bald eagles, please refer to the FWS's National Bald Eagle Management Guidelines (72 FR 31156) and regulatory definition of the term "disturb" (72 FR 31132) published in the Federal Register on June 5, 2007 (<http://www.fws.gov/southwest/es/arizona/BaldEagle.htm>), as well as the Conservation Assessment and Strategy for the Bald Eagle in Arizona (SWBEMC.org). Our office is also available to provide technical assistance to help you with compliance.

In addition, we are currently reviewing that status of several candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants.

Those candidate species that potentially may be found on BLM land and in the action area are: the Sonoran desert tortoise (*Gopherus agassizii*), headwater chub (*Gila nigra*), roundtail chub Lower Colorado River Distinct Population Segment (*Gila robusta*), Arizona treefrog Huachuca Canyon Population (*Hyla wrightorum*), and the relict leopard frog (*Lithobates onca*). We are available to provide technical assistance for any of these species, if necessary, to ensure they are not negatively impacted by herbicide treatments.

Thank you for your continued coordination. No further section 7 consultation is required for this project at this time. Should project plans change, or if information on the distribution or abundance of listed species or critical habitat becomes available, this determination may need to be reconsidered. In all future correspondence on this project, please refer to consultation number 02EAAZ00-2015-I-0276. We also encourage you to coordinate the review of this project with the Arizona Game and Fish Department. Should you require further assistance or if you have any questions, please contact Kathy Robertson (x232) or Mike Martinez (x224).

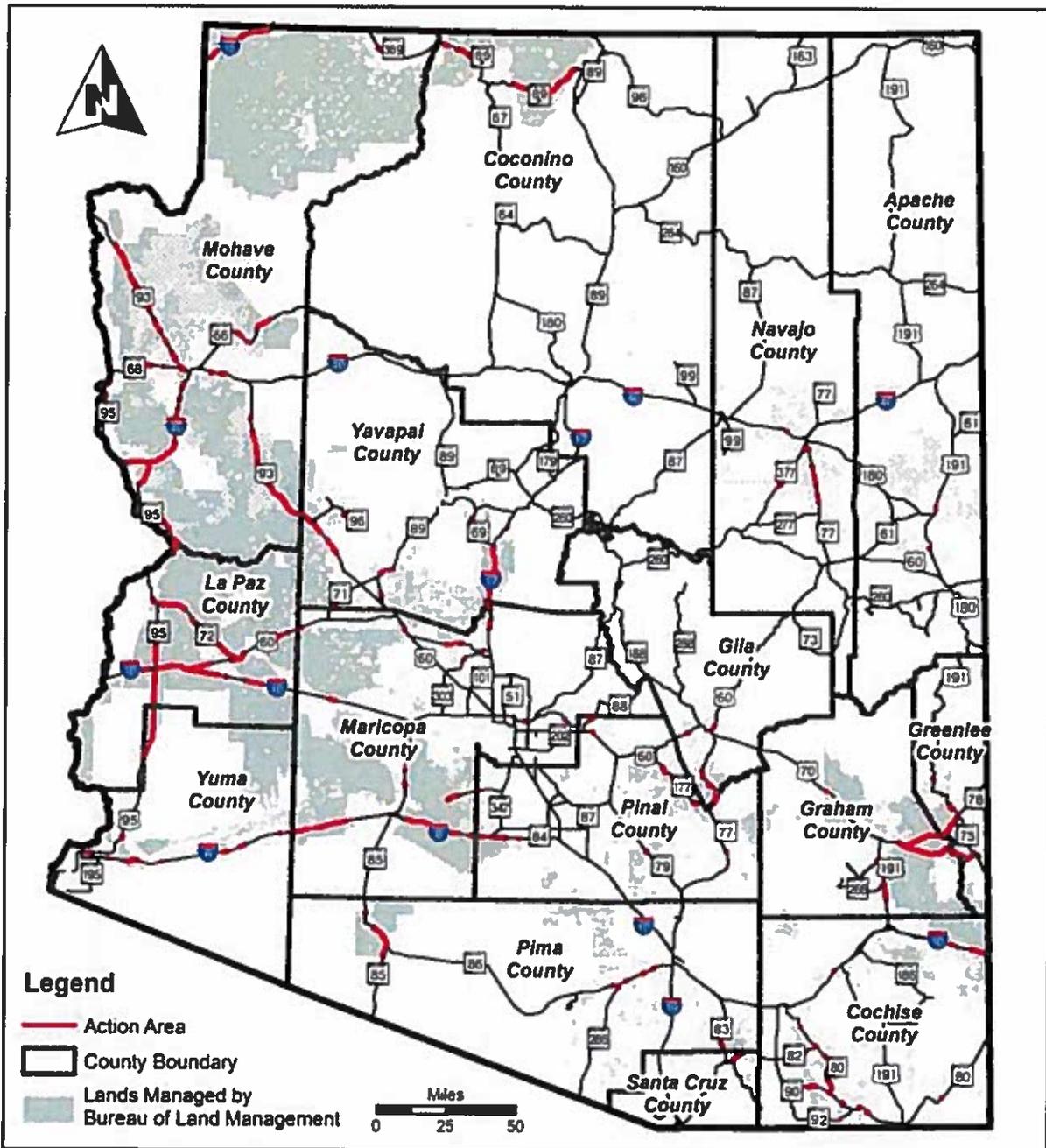


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cc (electronic):

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Figure 1. Statewide Action Area



Source: ADOT ATIS (2010); BLM (2012)

Map Disclaimer: This map is intended for general using purposes only

## Literature Cited

Bureau of Land Management (BLM). 2014. Biological Assessment of ADOT herbicide treatment program on Bureau of Land Management lands in Arizona. NEPA number: DOI-BLM-AZ-0000-2013-0001-EA. Prepared by: AZTEC Engineering Group, Inc. Submittal 4m December 24, 2014. 98 pp. + appendices.

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