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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2019–0016; FXES1114020000–190–FF02ENEH00]

**Final Environmental Impact Statement for the Lower Colorado River Authority’s
Transmission Services Corporation’s Habitat Conservation Plan in Texas**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act, make available the final environmental impact statement analyzing the impacts of issuance of an incidental take permit (ITP) for implementation of the Lower Colorado River Authority’s Transmission Services Corporation’s Habitat Conservation Plan (HCP). Our decision is to issue a 30-year ITP for implementation of the HCP, which authorizes incidental take of 22 listed and 1 unlisted species under the Endangered Species Act.

DATES: We will finalize a record of decision and issue a permit no sooner than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may obtain copies of the documents in the following formats:

- **Electronic:**
 - <http://www.regulations.gov>, in Docket No. FWS–R2–ES–2019–0016;
 - <https://www.fws.gov/southwest/es/AustinTexas/>; or

- CD-ROM: Contact Mr. Adam Zerrenner (see **FOR FURTHER INFORMATION CONTACT**).
- **Hard copy:** You may review the final EIS and HCP at the following locations (by appointment only):
 - Department of the Interior, Natural Resources Library, 1849 C Street NW., Washington, DC 20240. Call 202-208-5815.
 - U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102. Call 505-248-6920.
 - U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Call 512-490-0057.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, via U.S. mail at Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; or via phone at 512-490-0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The final environmental impact statement (EIS) was developed in compliance with the Service's decision-making requirements per the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and is based on the HCP submitted by the Lower Colorado River Authority's Transmission Services Corporation (LCRA TSC, applicant). We described, fully evaluated, and analyzed three alternatives in detail in our 2019 final EIS.

Our proposed action is to issue an ITP to the applicant under section 10(a)(1)(B) of the ESA that authorizes incidental take of the following federally endangered species:

- Golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*)
- Whooping crane (*Grus Americana*)
- Red-cockaded woodpecker (*Picooides borealis*)
- Ocelot (*Leopardus pardalis*)
- Houston toad (*Anaxyrus [=Bufo] houstonensis*)
- Barton Springs salamander (*Eurycea sosorum*)
- Comal Springs riffle beetle (*Heterelmis comalensis*)
- Peck's cave amphipod (*Stygobromus pecki*)
- Bee Creek Cave harvestman (*Texella reddelli*)
- Tooth Cave spider (*Tayshaneta [=Neoleptoneta] myopica*)
- Tooth Cave ground beetle (*Rhadine persephone*)
- Madla Cave meshweaver (*Cicurina madla*)
- Government Canyon Bat Cave spider (*Tayshaneta [=Neoleptoneta] microps*)
- Helotes mold beetle (*Batrisodes venyivi*)
- Ground beetle (no common name; *Rhadine exilis*)

- Ground beetle (no common name; *Rhadine infernalis*)

The ITP would also authorize incidental take of the following federally threatened species:

- Piping plover (*Charadrius melodus*)
- Rufa red knot (*Calidris canutus rufa*)
- Jollyville Plateau salamander (*Eurycea tonkawae*)
- Salado Springs salamander (*Eurycea chisholmensis*)
- San Marcos salamander (*Eurycea nana*)
- Georgetown salamander (*Eurycea naufragia*)

Also included is the following species, which is petitioned for listing:

- Spot-tailed earless lizard (*Holbrookia lacerata*)

Collectively, these are the covered species. The permit area for ITP implementation includes 241 Texas counties (see figure 1 in the HCP). Activities covered by the HCP include construction; operation; upgrade; decommissioning; and repair and maintenance of electrical transmission lines, substations, access roads, and related infrastructure and facilities (covered activities). LCRA TSC activities are classified as (1) new construction, (2) upgrading and decommissioning, (3) operations and maintenance, and (4) emergency responses. The applicant requested a term of 30 years, starting on the date of ITP issuance. The applicant will fully implement avoidance, minimization, and

mitigation measures to offset impacts to the covered species according to the HCP and ITP. The applicant has agreed to include the following minimization measures:

1. Meet annually with the Service to discuss upcoming LCRA TSC activities, updated distribution or occurrence information for covered species, opportunities for mitigation, and other concerns;
2. Perform pre-construction natural resource assessments to avoid adverse effects on sensitive environmental features (including species);
3. Implement best practices and other measures to reduce environmental impacts before, during, and after construction;
4. Provide annual training to LCRA TSC staff and contractors working on covered activities regarding the implementation of the HCP and any covered species overlapping with covered activities;
5. Clear and manage vegetation within rights-of-way using aboveground means when practicable;
6. Mark those sections of transmission lines that cross major rivers and out 300 feet from either side;
7. Limit herbicide applications to woody vegetation that is a potential threat to the reliability of LCRA TSC facilities and observe the Service's Southwest Region guidance for pesticide applications;
8. Restore preconstruction contours and revegetate construction sites and any other places where soil is disturbed within rights-of-way;
9. Avoid causing subsurface disturbances to wetlands, riparian areas, and aquatic habitats;

10. Use erosion and sedimentation controls as required by the Texas Commission on Environmental Quality or local ordinances to address storm water discharges during construction;
11. Avoid causing subsurface disturbances to wetlands, riparian areas, and aquatic habitats; and
12. Disturb the least amount of habitat as possible for safely implementing the covered activities.

The mitigation measures include the following commitments:

1. Ratios will be applied at varying levels, depending on direct versus indirect effects, assumed occupied versus confirmed occupied habitat, and when designated critical habitat or conservation lands benefitting the species are impacted.
2. Mitigation will occur through one or more of the following:
 - a. A Service-approved conservation bank, with priority given to banks that have the covered activities within their service area;
 - b. Service-approved in-lieu fee programs;
 - c. Third-party conservation providers implementing Service-approved conservation actions; or
 - d. Permittee-implemented Service-approved conservation actions.
3. In the unlikely event that no practicable opportunities exist for carrying out mitigation obligations in connection with a covered activity, LCRA TSC will work with the Service to identify other types of practicable mitigation solutions for the covered species, which may include but are not limited to:

- a. Approval of alternate means of mitigation delivery, such as translocating or repatriating covered species, enhancement of functional habitat for covered species, or restoration of degraded habitat for covered species;
 - b. Approval of methods to reduce or eliminate other threats to the covered species; and
 - c. Funding for research or studies regarding the covered species that further scientific understanding of how to manage and conserve those species.
4. If LCRA TSC starts a covered activity prior to mitigating, they will mitigate an additional 25 percent plus an additional 5 percent each year that mitigation is delayed.
 5. The Service will review and approve all mitigation, except where covered activities occur within the service area of a conservation bank for the impacted covered species.
 6. If a covered activity will take more than one covered species within the same location, then:
 - a. The mitigation can also count towards those species, if they are all present within the same location on the mitigation lands (i.e. stacked); and
 - b. A stacked mitigation credit can only be used once, regardless whether all of the species within the mitigation were impacted by the covered activity.

In addition to this notice, the Environmental Protection Agency (EPA) is publishing a notice announcing the EIS, as required under the Clean Air Act, section 309 (42 U.S.C. 7401 *et seq.*; see **EPA's Role in the EIS Process** below).

Background

The applicant has applied for an ITP under the ESA that would authorize incidental take of the covered species and would be in effect for a period of 30 years. The proposed incidental take of the covered species would occur from lawful non-Federal activities from the applicant's covered activities in the permit area. The HCP includes counties where LCRA TSC currently has facilities, counties LCRA TSC expects they may have future facilities, and a buffer around those counties. The final EIS considers the direct, indirect, and cumulative effects of implementing the HCP, including measures to minimize and mitigate such impacts to the maximum extent practicable.

Section 9 of the ESA and its implementing regulations in title 50 of the Code of Federal Regulations (CFR) prohibit "take" of fish and wildlife species listed as endangered or threatened under the ESA. The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct" (16 U.S.C. 1533). The term "harm" is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). We may, however, under specified circumstances, issue permits that allow the take of federally listed species, provided the take is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing ITPs for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

We published a notice of intent (NOI) in the *Federal Register* on July 11, 2017 (82 FR 35539), to determine the scope of issues and alternatives to be addressed in the

EIS. Publication of the NOI initiated a 30-day scoping period, during which the Service solicited comments regarding potential impacts associated with and identification of alternatives to the proposed Federal action for the Service to address in their NEPA environmental review document. The Service held scoping meetings in Corpus Christi, Austin, Midland, and College Station, Texas, in August 2017. The scoping comment period closed on August 30, 2017.

Nine individuals attended scoping meetings, and the Katy Prairie Conservancy and National Park Service each submitted a comment letter. The Service considered the scoping comments and incorporated ideas into the environmental effects analysis, as applicable.

We published a notice of receipt of the application and availability of the HCP and a draft EIS in the *Federal Register* on April 29, 2019 (84 FR 18075). The public comment period closed on June 13, 2019. We received nine comments, one from the Texas Historical Commission with only minor editing suggestions, one from the Environmental Protection Agency (EPA) with no comment, four from tribes (three with no comments or concerns, and one requesting to be a consulting party), one from Texas Parks and Wildlife Department, and two comments that were not substantive. Appendix B of the final EIS provides the comments, responses, and information on where the Service made changes to the HCP/EIS.

Decision

We intend to issue an ITP allowing the applicant to implement the proposed HCP, identified as the preferred alternative in the final EIS. We determined that the preferred alternative best balances the protection and management of habitat for the covered

species, while allowing for the covered activities to be authorized under a longer-term permit. Considerations used in this decision include: (1) minimization and mitigation measures that will benefit the covered species by permanently preserving more acreage than is removed, (2) the focus of mitigation in single parcels when acreage impacted will likely come from patches spanning linear projects, (3) mitigation measures that will fully offset anticipated impacts to the covered species and will contribute to their recovery, and (4) that the HCP is consistent with species recovery plans or outlines, noting that some species do not have either.

EPA's Role in the EIS Process

In addition to this notice, EPA is publishing a notice in the *Federal Register* announcing the final EIS for LCRA TSC's final HCP, as required under the Clean Air Act, section 309. The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs.

The EPA also serves as the repository (EIS database) for EISs that Federal agencies prepare. All EISs must be filed with EPA, which publishes a notice of availability on Fridays in the *Federal Register*. For more information, see <https://www.epa.gov/nepa>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

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Albuquerque, New Mexico.

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