



United States Department of the Interior

Fish and Wildlife Service
Arizona Ecological Services Office

9828 North 31st Avenue, Suite C3

Phoenix, Arizona 85051

Telephone: (602) 242-0210 Fax: (602) 242-2513



In reply refer to:

02EAAZ00-2021-I-0458

December 13, 2021

Michael Audin, Acting Regional Environmental Officer
U.S. Department of Homeland Security
Region IX
1111 Broadway, Suite 1200

Dear Michael Audin:

Thank you for your correspondence of September 9, 2021, received on the same day. This letter documents our review of the Ephraim Canyon Flood Project, in Santa Cruz County, Arizona, in compliance with section 7 of the Endangered Species Act of 1973 (ESA) as amended (16 U.S.C. 1531 et seq.).

Your letter concluded that the proposed project may affect, but is not likely to adversely affect, the threatened Chiricahua leopard frog (*Rana chiricahuensis*). We concur with your determination(s) and provide our rationale(s) below.

DESCRIPTION OF THE PROPOSED ACTION

A complete description of the proposed action is included in your September 2021, biological assessment (BA) and in email exchanges and phone calls between staff. The proposed project is located in the City of Nogales within Ephraim Canyon. Specifically, the project footprint spans the canyon between Interstate 19 and the Mariposa Port of Entry (see Figure 1 in BA). The purpose of the proposed project is to manage water flow in Ephraim Canyon Wash during 100-year flood events by reducing the maximum flow of 3,460 cubic feet per second (cfs) to 299 cfs. Construction of the flood control structure will occur over 18 months and will avoid the monsoon season (June – September) to the highest extent possible.

The Santa Cruz Flood Control District will construct a 48-foot-high earthen impoundment structure across Ephraim Canyon Wash, with a 5-foot-deep sediment retention basin on the downstream side. Installation of a 36-inch basal bleeder pipe will allow the management of water flow during rain events. In addition, an emergency spillway designed for flows associated with 500-year flood events will be installed. For flood control structure construction, the basin

floor, canyon sides, and wash will be regraded to a uniform elevation, which will require removing all vegetation (including stumps and root balls). Construction activities will disturb approximately 30 acres: 22.6 acres for the earthen basin and berm, 1.5 acres for additional ground disturbance, and 6 acres for periodic inundation.

The earthen impoundment will require 151,000 cubic yards of material for construction, whereas the retention basin excavation will generate 314,000 cubic yards. From the material excavated to create the retention basin, the earthen impoundment structure will be constructed, and an additional 151,000 cubic yards of material will be stockpiled on site. The remaining excess material, approximately 12,000 cubic yards, will be disposed of at the Rio Rico Landfill. Stockpiling of additional material for future could disturb up to another 31.1 acres, making the project area footprint no more than 61.1 acres. Five-strand wire fencing will be erected with one access gate around the downstream retention basin and upstream project area. Access to the project area will require the use of an existing unimproved road (North Carondelet Drive) and movement of materials within the project site will occur on a system of unimproved informal roads.

After project construction, some areas will have native vegetation restored by hydroseeding with a Flood Control District approved seed mix (see Appendix D in the BA). Long-term maintenance of the flood control structure will require periodic removal of sediment from the retention basin. A maximum of 54,000 cubic yards of sediment removed from the basin will be stockpiled on site, with the excess disposed at the Rio Rico landfill.

Conservation measures:

- Project operation will avoid the monsoon season (June – September) to highest extent possible.
- Heavy equipment will be operated during daylight hours only.
- Operations will be performed during dry conditions to avoid effects to wildlife that will be attracted to pools occurring on the construction site.
- All construction activities will be restricted to the smallest footprint required within designated access routes and work areas.
- Caution will be used to avoid trampling or damaging vegetation that is not marked for removal.
- Approved native vegetation seed will be used to revegetate portions of the site after project construction.
- General Avoidance and Minimization Measures identified in the FEMA Disaster, Mitigation, and Preparedness Programs in AZ, CA, and NV concurrence letter (02EAAZ00-2014-I-0609) will be followed.

DETERMINATION OF EFFECTS

We concur with your determination that the proposed action may affect, but is not likely to adversely affect the Chiricahua leopard frog for the following reasons:

Chiricahua leopard frog

- The closest population of Chiricahua leopard frogs to the action area is 10 miles away,

with the nearest permanent water one mile away. Given the action area may hold temporary water during wetter periods, the site may offer short-term dispersal opportunities for Chiricahua leopard frogs. Although the probability of Chiricahua leopard frogs occurring in the action is relatively low, construction activities will not be conducted during June – September when these frogs would potentially be using water at the site. Given this, the effects of the proposed project on Chiricahua leopard frogs are discountable.

- Although Chiricahua leopard frogs are found in a wide range of complex aquatic habitats, this species requires permanent water for adult survival and its long larval period (USFWS 2007). The action area currently does not hold permanent water and will not hold permanent water after construction of the flood control structure. Habitat for Chiricahua leopard frogs in the action area is seasonal and effects to this habitat from the proposed project are insignificant as the seasonality of habitat is not likely to be altered.
- No critical habitat occurs in the action area.

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 (Eagle Act). The MBTA prohibits the intentional taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except the FWS authorizes such action. The Eagle Act 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.

More information on the MBTA and available permits can be retrieved from [FWS Migratory Bird Program web page](#) and [FWS Permits Application Forms](#). 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, as well at the Conservation Assessment and Strategy for the Bald Eagle in Arizona ([Southwestern Bald Eagle Management Committee website](#)).

In keeping with our trust responsibilities to American Indian Tribes, by copy of this letter we are notifying Tribes that this proposed action may affect, but is not likely to adversely affect, the threatened Chiricahua leopard frog, and encourage you to invite the Bureau of Indian Affairs to participate in the review of your proposed action. We also encourage you to coordinate the review of this project with the Arizona Game and Fish Department.

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 02EAAZ00-2021-I-0458.

If you require further assistance or you have any questions, please contact Cassondra Walker (cassondra_walker@fws.gov) or Julie McIntyre (julie_mcintyre@fws.gov).

Sincerely,

Jeffrey A. Humphrey
Field Supervisor

cc (electronic):

Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ
Assistant Field Supervisor, Fish and Wildlife Service, Tucson
Director, Hopi Cultural Preservation Office, Kykotsmovi, AZ
Historic Preservation Officer, Pascua Yaqui Historic Preservation Office, Tucson, AZ
Manager, Tohono O'Odham Cultural Affairs Office, Sells, AZ
Environmental Specialist, Western Regional Office, Bureau of Indian Affairs, Phoenix, AZ
Environmental Protection Specialist, Environmental and Historic Preservation, Federal
Emergency Management Agency

LITERATURE CITED

U.S. Fish and Wildlife Service (USFWS). 2207. Chiricahua Leopard Frog (*Rana chiricahuensis*)
Recovery Plan. U.S. Fish and Wildlife Service, Southwest Region, Albuquerque, NM. 149 pp.+