

TE-199631-0

SPECIAL TERMS AND CONDITIONS FOR

**Programmatic Safe Harbor Agreement for Southwestern Willow Flycatcher in
Washington and Kane Counties, Utah**

Species: **Southwestern willow flycatcher** (*Empidonax traillii extimus*)
 Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*)
 Virgin River chub (*Gila seminuda*)
 Woundfin (*Plagopterus argentissimus*)

This permit authorizes Color Country Resource Conservation and Development Council, Inc. (Program Administrator) to administer and permit management activities in Washington and Kane counties, Utah with non-Federal landowners (Program Participants) that define conservation measures for flycatchers on their properties via Certificates of Inclusion in the Programmatic Safe Harbor Agreement. Activities under these Cooperative Agreements are intended to restore, enhance, and manage native riparian habitats in southwestern Utah. The following conditions apply to this permit:

- E. The authorization granted by this permit is subject to:
1. Full and complete compliance with, and implementation of, the terms and conditions of the Programmatic Safe Harbor Agreement (Programmatic Agreement) and all specific terms and conditions contained in this permit. These permit terms and conditions supersede and take precedence over any inconsistent provisions in the Programmatic Agreement or other documents associated with the Section 10(a)(1)(A) Enhancement of Survival Permit.
 2. Full and complete compliance with any applicable local, State, or Federal law regulation, or restriction governing the site and those conservation practices (as described within the Agreement) pertaining to, but not limited to, wildlife, land use, water quality, air quality, local economy, and cultural resources.
- F. Compliance with all necessary and required permits and licenses applicable to the fulfillment of the Agreement.
- G. This permit authorizes conservation practices that may incidentally “take” southwestern willow flycatchers, western yellow billed cuckoos, Virgin River chub, or woundfin in the course of daily business and implementation of the Programmatic Agreement, as long as such take occurs in accordance with the terms and conditions provided in the September 18, 2008 Biological Opinion. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

- H. Prior to commencing any fish translocation, Program Participants and the Program Administer will coordinate with the Utah Division of Wildlife Resources (contact Mr. Rick Fridell 435.688.1426) (72) hours prior to any construction activity that would disturb the active channel to schedule native fish clearance (translocation).
- I. Any southwestern willow flycatchers, western yellow billed cuckoos, Virgin River chub, or woundfin incidentally taken must be reported to the Service=s Division of Law Enforcement in Cedar City, Utah at telephone (435) 865-0861, the Service=s Ecological Services Office at telephone (801) 975-3330, and the Utah Division of Wildlife Resources in Cedar City at telephone (435) 865-6120 or in Saint George at telephone (435) 688-1426.
- J. If you have questions regarding this permit or need additional information, please contact the Field Supervisor, Ecological Services, 2369 West Orton Circle, West Valley City, UT 84119, telephone 801-975-3330.
- K. As a reference and reminder, here are the reasonable and prudent measures and terms and conditions listed in the September 18, 2008 Biological Opinion entitled “Intra-agency Formal Section 7 Consultation with the U.S. Fish and Wildlife Service and Formal Section 7 Consultation with the Natural Resources Conservation Service for the Proposed Programmatic Safe Harbor Agreement for the Southwestern Willow Flycatcher in Washington and Kane Counties, Utah and associated impacts to the Western Yellow-billed Cuckoo, Virgin River Chub and Woundfin”

Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measure is necessary and appropriate for all Agencies to minimize impacts of incidental take of flycatchers, cuckoos, Virgin River chub, and woundfin.

1. Measures shall be implemented during the life of this programmatic Safe Harbor Agreement, to minimize impacts to flycatchers, cuckoos, Virgin River chub, and woundfin and prevent these species from being killed or harmed by any project-related activity.
2. Measures shall be implemented to minimize impacts to designated critical habitat for the flycatcher, Virgin River chub, and woundfin.

Term and Condition for the U.S. Fish and Wildlife Service

In order to be exempt from the prohibitions of Section 9 of the Act, the Fish and Wildlife Service must ensure implementation of this Agreement complies with the following Term and Condition, which implements the Reasonable and Prudent measure described above.

To implement Reasonable and Prudent Measure number 1 and number 2, the following Term and Condition shall be implemented:

- a) All guidelines contained in the 10(a)(1)(A) permit associated with this consultation will be implemented.

Terms and Conditions for the Natural Resources Conservation Service

In order to be exempt from the prohibitions of Section 9 of the Act, the Natural Resources Conservation Service must ensure implementation of this Agreement complies with the following Term and Condition, which implements the Reasonable and Prudent measure described above.

To implement Reasonable and Prudent Measure number 1, the following Terms and Conditions shall be implemented:

- a) Coordinate with the Fish and Wildlife Service on all funded activities associated with these Safe Harbor Agreements to ensure that impacts to listed and candidate species are minimized and avoided.
- b) Southwestern willow flycatcher and Western yellow-billed cuckoo surveys will be conducted in accordance with Service approved survey protocol prior to any habitat modification activities.
- c) Habitat disturbances will be avoided within 0.25 mile of occupied southwestern willow flycatcher and western yellow-billed cuckoo habitat from May 1 to August 15.
- d) To avoid direct and indirect (downstream) impacts to spawning fish (spawning period is April 1 – July 31) all channel disturbing activities will be conducted from August 1 thru March 31 and will be implemented in as short of a construction time period as possible.
- e) Translocation of endangered fish out of affected area – coordinate with the Utah Division of Wildlife Resources (contact Mr. Rick Fridell 435.688.1426) (72) hours prior to any construction activity that would disturb the active channel to schedule native fish clearance (translocation).
- f) During all channel disturbing activities the applicant must have a qualified fish biologist, with experience in desert river ecosystems, on-site to monitor environmental effects.
- g) Maintain unrestricted fish passage through the project area at all times. Consult with Mr. Rick Fridell (contact information above) or his designee if construction activities result in any increase in local channel gradient. Dewatering of stream channels should be used as a last resort during construction.

- h) If construction materials are displaced by high flows the applicant must contact Mr. Paul Abate, USFWS (801.975.3330; ext 130) as soon as possible to coordinate least intrusive retrieval methods.
- i) If herbicides are used for vegetation treatments, they must be Service-approved chemicals, be applied in a manner that will not impact fish or wildlife resources (i.e. adequate distance from water for chemical mixing and spraying), and follow NRCS Standards and Specifications for Application.

To implement Reasonable and Prudent Measure number 2, the following Term and Condition shall be implemented:

- a) The Service has developed the following list of best management practices (BMPs) for construction activities in aquatic and riparian habitats. The Program Administrator and Program Participants must adhere to all BMPs that apply to the individual Cooperative Agreements:
 - 1) If bank stabilization and erosion control structures are necessary, they will be properly designed to maintain or enhance natural stream function (sinuosity, gradient, hydrology, and sediment transport).
 - 2) Concrete, asphalt, steel or other human-made materials will not be used for bank stabilization or in the active stream channel. Boulders, root-wads and other natural materials found locally will be used to stabilize stream banks.
 - 3) Care will be taken to minimize sedimentation resulting from bank or stream bed disturbance.
 - 4) Equipment will be cleaned to remove noxious weeds/seeds and petroleum products prior to moving on site.
 - 5) Fueling machinery will occur off site or in a confined, designated area to prevent spillage into waterways and wetlands. Oil booms will be on site and placed downstream of the project site prior to beginning work if equipment will be operating in the low flow channel.
 - 6) Materials will not be stockpiled in the riparian area or other sensitive areas, e.g., wetlands.
 - 7) Fill materials will be free of fines, waste, pollutants, and noxious weeds/seeds.

- 8) Equipment will work from the top of the bank or from the channel to minimize disturbance to the riparian area and to protect the banks. Heavy equipment should avoid crossing and/or disturbing wetlands.
- 9) Ingress and egress access will be kept to a minimum.
- 10) Excavated soils will be sorted into mineral soils and top soils. When backfilling a disturbed site top soils will be placed on top to provide a seed bed for native plants.
- 11) Disturbed areas will be monitored for noxious and undesirable plant species and control actions will be implemented if necessary.
- 12) Disturbed areas (work site(s), ingress, egress, stockpile site(s), pit) will be revegetated when appropriate after construction with native plants or certified weed-free native seed. The planting will be monitored for success. If the planting fails it will be reseeded/planted.
 - a) All construction material must be removed from the active channel and from the 100-year floodplain at the end of the project. The channel and floodplain should be restored to the natural condition (topography and vegetation).
 - b) Coordinate with the Virgin River Resource Management and Recovery Program (contact Mr. Steve Meismer 435.673.3617) for technical input on proper riparian revegetation techniques and possible sources of vegetative materials.
 - c) The use of any streambank stabilization structures (e.g. rock riprap) in an active channel or the 100-year floodplain of any project related river shall be coordinated with UDWR and USFWS during the planning stage. Other alternative options such as restoration with natural vegetation must be considered prior to relying on rock riprap. If management activities are determined to cause significant impacts, consultation with the Service will be reinitiated.
 - d) Coordinate any floodplain wetland restoration, off-channel open water habitat creation, and riprap wall installation with UDWR, Virgin River Resource Management and Recovery Program, and USFWS to prevent and plan for potential treatment of nonnative fish habitat.