



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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In Reply Refer to:
FWS/R2ES/AFO

Memorandum

To: Deputy Regional Director, Region 2, Albuquerque,
New Mexico (Attn: M. Tuegel)

From: Field Supervisor, Arlington Ecological Services Field Office, Arlington, Texas

Subject: Findings and Recommendations on Issuance of an Incidental Take Permit
(TE-21506B-0) for the Golden-cheeked Warbler (*Setophaga chrysoparia*) to
Bosque Canyon Ranch (BCR) in Bosque County, Texas.

I. DESCRIPTION OF PROPOSAL

Bosque Canyon Ranch (Applicant or BCR) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) pursuant to §10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. §1531-1544). The requested ITP, which is for a period of 50 years, would authorize incidental take of the golden-cheeked warbler (*Setophaga [=Dendroica] chrysoparia*; GCWA; Covered Species).

The BCR Habitat Conservation Plan (HCP) qualifies as a low-effect HCP and has been categorically excluded from the National Environmental Policy Act of 1969 (NEPA) therefore NEPA alternatives need not be considered. The accompanying HCP, which is incorporated herein by reference, proposes to minimize and mitigate impacts from any expected incidental take of the Covered Species.

The issuance of an ITP under section 10(a)(1)(B) of the Act would authorize incidental take of GCWAs during the implementation of Covered Activities (see below). Both the Plan and Permit Area of the HCP include the areas of the BCR made up of the covered Homesteads, zone of indirect effects, and mitigation areas. The primary purpose of the HCP is to allow the BCR to develop and operate a low-density residential community.

Covered Activities include: 1) removal/clearing of trees and vegetation, 2) ground disturbing activities, 3) construction, 4) maintenance and repair, and 5) homeowner occupation and residential activities.

It is anticipated that 321.84 acres of the 924.35 acres of current GCWA habitat will be directly (28.21 acres) or indirectly (293.63 acres) affected by Covered Activities on the BCR over the 50 year permit period. The anticipated effects from the Covered Activities that result in habitat loss are likely to result in a reduction of breeding, feeding, and/or sheltering habitat for the Covered Species. BCR developed a conservation plan to ensure their proposal minimizes and mitigates, to the maximum extent practicable, all incidental take of the Covered Species from activities described in the HCP and authorized for incidental take under section 10(a)(1)(B) of the Act.

Other species listed as threatened or endangered pursuant to the Act that may occur in the Permit Area are: the endangered whooping crane (*Grus americana*), and the black-capped vireo (*Vireo atricapilla*). No incidental take of these species is expected from implementation of the HCP. However, since these species are not covered in the HCP dated October 2013 and were not requested to be included in the ITP, the Habitat Conservation Plan Assurances, “No Surprises Rule,” (63 FR 8859) are not applicable for these species.

The BCR HCP proposes to mitigate impacts to Covered Species by permanently conserving approximately 770 acres of unimpacted (i.e., not affected directly or indirectly by the proposed activities) GCWA breeding habitat on the Ranch’s property and by conserving another 227.6 acres of GCWA supporting habitat that is fully expected to mature into GCWA breeding habitat. Assuming maturation of the supporting habitat this mitigation provides conservation of 997.6 acres of GCWA habitat in perpetuity. This mitigation is approximately five times more than would typically be required by the Service under the mitigation ratios of 2:1 and 0.5:1 for direct and indirect effects, respectively for this species.

Analysis of Effects

The effects of the proposed action on the affected species are fully analyzed in the Service’s low-effect screening form and biological opinion (BO) for the proposed action, which are incorporated herein by reference. The proposed plan area has been evaluated for federally listed threatened or endangered species and no adverse effects to any other species are expected except to the GCWA.

Full implementation of the BCR development is expected to have direct effects (vegetation clearing) on 28.21 acres of GCWA breeding habitat, resulting in take in the form of harm. It is also expected that degradation of up to 293.63 acres of surrounding habitat may result in take in the form of harassment through decreased use of the area for breeding, feeding, and sheltering and may reduce reproductive output, although complete abandonment may not occur. Mitigation is being accomplished by permanently conserving approximately 770 acres of unimpacted (i.e., not affected directly or indirectly by the proposed activities) GCWA breeding habitat on the Ranch’s property and by conserving another 227.6 acres of GCWA supporting habitat that is fully expected to mature into GCWA breeding habitat. Assuming maturation of the supporting habitat this mitigation provides conservation of 997.6 acres of GCWA habitat in perpetuity. This is the equivalent of a 30:1 mitigation ratio for direct effects and 0.5:1 for indirect effects, and exceeds any reasonable mitigation standard for GCWA proposed by the Service.

Clearing in all areas of GCWA habitat would occur during the time of year when GCWAs have migrated south and would not be present. Potential indirect effects to GCWAs could occur when

returning individuals find previous habitat areas have been modified and as a result, there has been a general reduction in available habitat.

The amount of GCWA habitat proposed to be impacted is estimated to be less than 0.007 percent of all GCWA habitat range-wide. Based on the distribution of the species and its habitat, the Service has determined that the amount of requested incidental take for the GCWA is so minor that it is not likely to jeopardize the species as a whole.

Critical habitat has not been designated for the GCWA; therefore no adverse modification of critical habitat will occur.

II. PUBLIC COMMENT

A Notice of Availability of the draft HCP and accompanying low-effect screening form was published in the *Federal Register* on January 8, 2013 (79 FR 1387). The public comment period closed on February 7, 2013.

We did not receive any comments from the public during the public comment period.

III. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

The HCP provides a discussion on compliance with all section 10(a)(1)(B) issuance criteria.

- (i) The proposed taking will be incidental to otherwise lawful activities. We find that the take will be incidental to otherwise lawful activities, including clearing, construction, development, utility installation and maintenance, public infrastructure projects, and occupation of homesites. The take of individual GCWAs will be primarily due to the indirect impacts of habitat destruction and/or alteration.
- (ii) To the maximum extent practicable, avoid, minimize, and mitigate for the impacts of such taking. BCR has committed to the maximum extent practicable, to minimize and mitigate the effects of taking GCWAs. To minimize impacts, clearing is restricted to periods when GCWAs are not present, loud noise and construction during the breeding season will be restricted/limited, impacts to mature juniper trees will be limited, and impacts to trees and shrubs outside the building envelope must be approved by the Homeowner's Association. The mitigation exceeds that which is commensurate with the level of take anticipated. In addition, BCR has included provisions for changed circumstances that are foreseeable. These strategies will ensure that impacts from the proposed taking are minimized and mitigated to the maximum extent practicable. For a complete discussion on the proposed minimization and mitigation actions see section 5.3 in the HCP.
- (iii) Ensure adequate funding for the plan will be provided. The total cumulative cost of the HCP for the 50-year period is approximately \$144,000. The costs over the duration of the permit and in perpetuity will be collected through homeowner's association dues. Dues are collected and enforced by the homeowners association

(HOA), and secured by lien rights against the Homesteads under the covenants, conditions, and restrictions. Each year the HOA will include costs to implement the HCP for the ensuing year in its annual budget and lot assessments will be established based on that budget. For a complete discussion on funding see section 7 of the HCP.

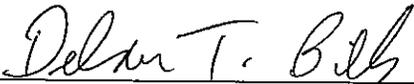
- (iv) The proposed taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. As the Federal action agency considering whether to issue an ITP to BCR, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated May 7, 2014, concluded that issuance of the ITP will not jeopardize the continued existence of the Covered Species in the wild. No critical habitat has been designated for the Covered Species, and thus none will be affected. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effects of the issuance of the ITP will not result in any effects to or jeopardy of non-covered listed species and no adverse modification of any designated critical habitat within the permit area is expected.
- (v) The Applicant has met other requirements imposed by the Secretary of the Interior, such as monitoring and reporting. We assisted BCR in the development of their HCP. We commented on draft documents, participated in numerous meetings and conference calls, and worked closely with BCR during every step of plan and document preparation, so that conservation of the Covered Species would be assured and recovery would not be precluded by the Covered Activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in conservation measures can be implemented if proposed measures prove ineffective (adaptive management) or impacts exceed estimates (changed circumstances). It is our position that no additional measures are required to implement the intent and purpose of the HCP and its associated ITP.
- (vi) The Secretary of the Interior has received assurances that the plan will be implemented. Chapters 4 through 7 of the HCP address the implementation, including identifying how BCR will ensure that avoidance and minimization measures will be properly implemented. This plan for implementation provides assurances to the Service that BCR will fully implement the HCP.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

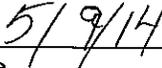
The Service included the five-point policy as an addendum to the Habitat Conservation Planning Handbook on July 3, 2000 (65 *Federal Register* 35242). The policy emphasizes the development of biological goals and objectives, adaptive management strategies, monitoring provisions, permit duration considerations, and public participation into HCPs as a way to increase their effectiveness. BCR's HCP addresses each of the criteria for permit issuance and incorporates all aspects of the five-point policy.

V. RECOMMENDATION ON PERMIT ISSUANCE

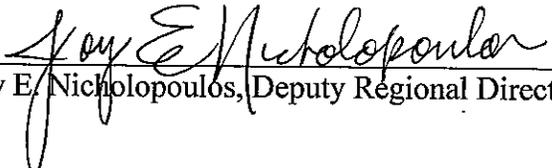
Based on the foregoing findings with respect to the proposed action, issuance of an ITP to authorize incidental taking of the GCWA by BCR, in accordance with the HCP and BO, is recommended.



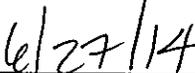
Debra T. Bills, Field Supervisor



Date



Joy E. Nicholopoulos, Deputy Regional Director



Date