



United States Department of the Interior

FISH AND WILDLIFE SERVICE
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SUMMARY
FINAL CONFERENCE OPINION ON THE EFFECTS TO
THE SACRAMENTO MOUNTAINS CHECKERSPOT BUTTERFLY FROM THE
PROPOSAL FOR THE VILLAGE OF CLOUDCROFT WATER WELL AND PIPELINE
AT SLEEPY GRASS, SACRAMENTO RANGER DISTRICT, LINCOLN NATIONAL
FOREST, NEW MEXICO

Cons. #2-22-02-F-012

Date of the final opinion: May 28, 2002

Action agency: Sacramento Ranger District, Lincoln National Forest

Project: The project concerns the proposal for the Village of Cloudcroft water well and pipeline at Sleepy Grass, Sacramento Ranger District, Lincoln National Forest, New Mexico. The purpose of this project is to create a permanent source of water for the Village and supplement existing sources that are not adequate for current and future water needs. The project area is located generally east of Cloudcroft, New Mexico. Construction will include installing a cement pad surrounded by a graveled area, a heated house, and an approximately 0.75 mile pipeline, with about 0.5 mile on Forest Service and 0.25 mile on non-Federal lands. There will also be a 20-foot buffer around the described area of work for any construction activities that may take place while installing the cement or gravel pads, heated house, or the pipeline. The proposed project will impact approximately 3.7 acres of occupied and proposed critical habitat.

Proposed species affected: Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) and its proposed critical habitat.

Conference opinion: Non-jeopardy; no destruction or adverse modification of proposed critical habitat.

Incidental take statement: An unknown number of Sacramento Mountains checkerspot butterflies are expected to be taken as a result of this project. Implementation of reasonable and prudent measure and terms and conditions is discretionary unless the species becomes listed.

Conservation Recommendations: Implementation of conservation recommendations is discretionary. Two conservation recommendations are provided.



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May 28, 2002

Cons. # 2-22-02-F-012

Jose M. Martinez, Forest Supervisor
Lincoln National Forest
Federal Building
1101 New York Avenue
Alamogordo, New Mexico 88310-6992

Dear Mr. Martinez:

This letter responds to your May 13, 2002, letter that we received on May 16, 2002, requesting initiation of formal conferencing under the Endangered Species Act of 1973, as amended (Act). The request concerns the proposal to issue a special use permit for the Village of Cloudcroft water well and pipeline at Sleepy Grass, Sacramento Ranger District, Lincoln National Forest, New Mexico. The Biological Assessment (BA) evaluates the potential impacts of this project on the Mexican spotted owl (*Strix occidentalis lucida*) (owl) and the proposed endangered Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (checkerspot butterfly) and its proposed critical habitat. You have determined that the proposed action will have "no effect" on the owl, and "may affect, is likely to adversely affect" the checkerspot butterfly and its proposed critical habitat.

The Village of Cloudcroft is proposing to build a fiberglass heated house around a newly drilled well near the junction of the entrance road to Sleepy Grass Campground and Highway 82. The proposed project location is T16S R12E Section 4. The wellhead will be situated in the middle of an 8 by 8-foot cement pad that is centered in a 24 by 24-foot gravel pad. A 6 by 6-foot heated house will be installed on top of the cement pad. A 6-inch pipeline will be installed adjacent to Highway 82, with approximately 0.5 mile of the pipeline traversing National Forest land and an additional 0.25 mile on non-Federal land. There will also be a 20-foot buffer around the described area of work for any construction activities that may take place while installing, maintaining, or repairing the cement pad and surrounding graveled area, heated house, or the pipeline.

The project area is adjacent to the Little Apache PAC #91 which has a known nest site approximately 0.75 mile from the proposed project area. The proposed activity will not: 1) occur within a PAC or on slopes greater than 40 percent; 2) occur within restricted habitat; and 3) not disturb reproduction of the owl. Additionally, this activity will not add to the amount of human activity within the adjacent PAC after implementation. Because the proposed project will

not affect the owl or its habitat, we concur with your determination that the proposed action will have "no effect" on the owl.

You requested formal conferencing because you determined this proposed project, "may affect is likely to adversely affect" the proposed checkerspot butterfly and its proposed critical habitat. Therefore, this document represents our conference opinion the effects of the proposed project, on the proposed checkerspot butterfly and its proposed critical habitat in accordance with section 7 of the Act.

This conference opinion is based on information provided in the BA; email and telephone conversations between our staffs; data presented in the proposed rule to list the checkerspot butterfly as endangered with critical habitat (66 FR 46575); data in our files; Forest Service (FS) checkerspot butterfly data from survey reports; literature review; and other sources of information. References cited in this conference opinion are not a complete bibliography of all literature available on the checkerspot butterfly, the proposed action and its effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

Consultation History

Informal conferencing began for this project began on October 3, 2001, when we provided comments on your October 3, 2001, proposal to issue a special use permit to the Village of Cloudcroft to drill exploratory wells in Rawlins and Apache Canyons (Consultation number 2-22-02-I-012). At that time, we recommended a variety of discretionary conservation measures for exploratory well drilling, and that if the project was successful in locating a permanent water source, that you conference for any impacts that might be associated with permanently developing and using such water (e.g., maintenance road, water tank, piping, excavation, etc). On May 8, 2002, your staff informed us that a well in the proximity of Sleepy Grass Campground had successfully located water and the Village of Cloudcroft had requested a special use permit to develop the well and associated infrastructure. Your staff indicated that they would be requesting formal conferencing, and we discussed the project and any concerns with potential adverse impacts of the proposal on the proposed checkerspot butterfly and its proposed critical habitat. On May 16, 2002, the Lincoln National Forest submitted the BA with request for formal conferencing.

CONFERENCE OPINION

It is our conference opinion that the implementation of the proposal for the Village of Cloudcroft water well and pipeline at Sleepy Grass, Sacramento Ranger District, Lincoln National Forest, New Mexico, as addressed in this document, is not likely to jeopardize the continued existence of the proposed checkerspot butterfly or destroy or adversely modify its proposed critical habitat.

DESCRIPTION OF THE PROPOSED ACTION

The proposed action is described above. The disturbance will be located in a meadow area around a newly drilled well adjacent to the junction of the entrance to Sleepy Grass Campground and Highway 82. The proposed project will impact approximately 3.7 acres of the meadow that is occupied by the checkerspot butterfly and is also proposed as critical habitat. For this conference we have defined the action area to include the meadow habitat within the immediate project area including a 20-foot buffer around all construction on Forest Service and non-Federal (i.e., private) lands.

Implementation of the proposed project will result in direct permanent impacts to the habitat immediately surrounding the well, including the indirect effects within a 20-foot buffer, from the construction of a cement pad and surrounding graveled area, a heated house. These impacts will result in a permanent loss of the larval food plants New Mexico penstemon (*Penstemon neomexicana*) and valerian (*Valeriana edulis*), and the adult nectar source orange sneezeweed (*Helenium hoopesii*). We estimate this permanent loss of habitat to be approximately 3,036 ft² (0.1 acre). The project will also result in the temporary loss of these same food plants in area where the pipeline will be buried and the surrounding indirect effects within the 20-foot buffer. We estimate this temporary loss of habitat to be approximately 158,400 ft² (3.6 acres). Additionally, we believe that some individual checkerspot butterflies will be taken in the course of this project. Consequently, total occupied habitat and proposed critical habitat estimated to be either directly or indirectly affected either permanently or temporarily is approximately 3.7 acres.

There are approximately 30 acres of suitable occupied meadow and proposed critical habitat within the surrounding project area in Apache Canyon. The proposed action will impact about 12 percent of the occupied area and proposed critical habitat in Apache Canyon.

The BA indicates that, as part of the proposed action, the following conservation measure will be implemented:

1. The Village of Cloudcroft will restore the area disturbance (i.e, approximately 3.6 acres) from the construction of the pipeline to pre-disturbance conditions.

STATUS OF THE SPECIES (range-wide)

The checkerspot butterfly is a member of the brush-footed butterfly family (Nymphalidae). The adults have a wingspan of approximately 5 centimeters (cm) (2 inches (in)) and they are checkered with dark brown, red, orange, white, and black spots and lines. The taxon was described in 1980 based on 162 adult specimens (Ferris and Holland 1980).

The checkerspot butterfly inhabits meadows within the mixed-conifer forest (Lower Canadian Zone) at an elevation between 2,450 and 2,750 m (8,000 and 9,000 ft) in the vicinity of the Village of Cloudcroft, Otero County, New Mexico. The adult checkerspot butterfly is often

found in association with the larval food plants New Mexico penstemon and valerian, and adult nectar sources such as sneezeweed. New Mexico penstemon is a narrow endemic species (Sivinski and Knight 1996), restricted to the Sacramento Mountains of south-central New Mexico. Other plants that have been documented in checkerspot butterfly habitat include: arrowleaf groundsel (*Senecia riangularis*), curly-cup gumplant (*Grindelia squarrosa*), figworts (*Scrophularia* sp.), penstemon (*Penstemon* sp.), skyrocket (*Ipomopsis aggregata*), milkweed (*Asclepias* sp.), Arizona rose (*Rosa woodsii*), and Wheeler's wallflower (*Erysimum capitatum*) (FS 1999d).

Adult checkerspot butterflies apparently lay their eggs on New Mexico penstemon and perhaps valerian, the known larval host plants. After hatching, larvae feed on host plants and, during the 4th or 5th instar (the period between molts in the larval stage of the checkerspot butterfly), enter an obligatory and extended diapause (maintaining a state of extended inactivity), generally as the food plants die back in the fall from freezing. Some larvae may remain in diapause for more than one year, depending on environmental conditions. During diapause, larvae probably remain in leaf or grass litter near the base of shrubs, under the bark of conifers, or in the loose soils associated with pocket gopher (*Thomomys bottae*) mounds (Moore 1989; T. Narahashi, Lincoln National Forest, pers. comm. 1999). Once larvae break diapause, they feed and grow through three or four more instars before pupating (entering the inactive stage within a chrysalis) and emerging as adults. Diapause is generally broken in late spring (March-April) and adults emerge in mid-summer (June-July).

The extent of the historical range of the checkerspot butterfly is not known due to limited information collected on this subspecies prior to its description (Ferris and Holland 1980). However, based upon the location of its meadow habitat, the general trend of commercial and private development in suitable habitat, and the encroachment of conifers into suitable habitat due to fire suppression on public and private lands, it is likely that the species once occupied a more extensive, but still limited area.

Based on data gathered by the FS, the subspecies has been documented at 15 general localities (i.e., the geographic extent of occupied areas were not delimited and discrete populations were not identified) (FS 1999a, 1999b, 1999d, 2000a, 2000d). The known range of the checkerspot butterfly is within an 85 square km (33 square mi) area, within which the distribution of the checkerspot butterfly is patchy and disjunct. The known range of the checkerspot butterfly is delimited on the north by the Mescalero Apache Nation lands, on the west by Bailey Canyon at the mouth of Mexican Canyon, on the east by Spud Patch Canyon, and on the south by Cox Canyon (FS 2000a, 2000d). The potential range of the checkerspot butterfly to the east and west is likely restricted because the non-forested areas are below 2,450 m (8,000 ft) in elevation and the majority of checkerspot butterflies have been consistently documented at higher elevations (FS 1999a 1999b, 1999d, 2000a, 2000d).

Checkerspot butterflies have a patchy distribution throughout the Sacramento Ranger District. Approximately 50 percent of all lands that might support the checkerspot butterfly are in non-

Federal (i.e., private) ownership, subject to ongoing and future development activities. The FS has estimated there are about 2,104 ha (5,198 ac) of potential habitat, composed of 1,034 and 1,070 ha (2,553 and 2,645 ac) on private and FS lands, respectively (FS 1999b).

Based on available information on topography, soils, and vegetation, it is likely that the distribution of the checkerspot butterfly was more extensive and continuous prior to the increase in commercial and private development, construction of roads, overgrazed range conditions, and the encroachment of conifers and subsequent decrease in the amount of non-forested lands. The isolated localities and limited geographic range of the checkerspot butterfly indicate that the species is particularly vulnerable to large-scale perturbations (disturbances that impact the habitat and host plants associated with the species), which could lead to extinction (Ehrlich *et al.* 1972; Thomas *et al.* 1996).

The threats that have been identified for the checkerspot butterfly are commercial and private development, FS activities, fire suppression and wildfire, highway and forest road reconstruction, recreational impacts, domestic livestock grazing, nonnative vegetation, and insect control (66 FR 46575).

Commercial and private development is a significant threat to the checkerspot butterfly. Habitat conversion activities from commercial and private development have likely reduced many historic checkerspot butterfly localities. Approximately 50 percent of all lands that might support the checkerspot butterfly are in private ownership, and may be subject to ongoing and future development activities. Much of these private lands are currently being developed for residential or commercial uses (FS 1986; FS 1997; Holland 2001). Within the known range of the checkerspot butterfly, there are two golf courses, at least 12 private developments, the Village of Cloudcroft, schools, several recreational parks, a ski area, and a network of paved, gravel, or dirt roadways.

The construction of homes, businesses, and associated infrastructure in the habitat of the checkerspot butterfly could directly affect the species through mortality or result in indirect effects, such as the introduction of nonnative plants and animals or loss of movement corridors (Holland 2001). Ground disturbance and vegetation clearing for commercial or private development can disturb soils, remove or eliminate diapause sites (i.e., leaf litter and grasses) and larval or adult food plants, and kill or injure individuals (Wilcox and Murphy 1985; Murphy and Weiss 1988).

We are aware of FS projects proposed within the known range of the checkerspot butterfly that have the potential to affect the checkerspot butterfly. Recent or future projects include: (1) a capital improvement project for three campgrounds; (2) a new power line, service road, and corridor; (3) livestock grazing activities in several allotments; and (4) a land transfer to the Village of Cloudcroft (FS 1999a, 1999b, 1999f, 2000; Service 1999, 2001a, 2001b).

The FS has eliminated some proposed projects (e.g., the construction of new administrative building) in habitat used by the checkerspot butterfly. They have also taken some actions to protect and manage the checkerspot butterfly, including instituting a checkerspot butterfly closure order, fencing a portion of one checkerspot butterfly locality, and conducting checkerspot butterfly surveys to determine range and occupancy (FS 1999a, 1999b, 1999h, 2000a, 2000d). These actions have been beneficial, especially for increasing our knowledge of this species. However, other multiple use priorities on FS lands, such as range management, road maintenance, or capital improvement projects, have the potential to impact this species.

The results of 100 years of fire suppression in the Sacramento Ranger District currently threatens the checkerspot butterfly. Fire exclusion and suppression have reduced the size of grasslands and meadows by allowing the encroachment of conifers, and these trends are projected to continue (FS 1995, 1999h). The natural fire regime historically maintained non-forested openings and meadows. Prior to 1900, the mean natural fire interval for forests in the Sacramento Mountains was about 4 to 5 years (Kaufmann *et al.* 1998). These frequent, low-intensity, surface fires historically maintained a forest that was more open (i.e., more non-forested patches of different size, more large, older trees, and fewer dense thickets of evergreen saplings) than it is currently (Kaufmann *et al.* 1998). Such low-intensity fires are now a rare event. In the next few years, the Sacramento Ranger District may have a catastrophic burn that eliminates some or all of the remaining checkerspot butterfly habitat. This risk of catastrophic wildfire is one of the most significant threats facing this species and projects resulting from increased fire risk funding will need to be implemented before significant risk reduction for the checkerspot butterfly is achieved (66 FR 46575).

The reconstruction of forest roads is a threat to the checkerspot butterfly, causing elimination of larval food and adult host plants, crushing of butterflies, and increasing the amount of soil erosion or dust. Because roads are usually sited in open non-forested areas, larval food and adult nectar plants are frequently found in large concentrations along roadways. These areas can similarly contain aggregations of pre- and post-diapause larvae, because bare soils provide sites for thermoregulation (maintenance of a constant internal body temperature regardless of environmental temperature) (Porter 1982). Therefore, activities that disturb suitable habitat adjacent to roadways can impact very high quality sites, important for the development of various life history stages (e.g., pre-diapause instar development). Construction of roadways has historically eliminated or reduced the quality or quantity of checkerspot butterfly habitat (Pittenger 1999; 66 FR 46575).

The New Mexico State Highway and Transportation Department (NMSHTD) recently improved portions of an approximately 3.2 km (2 mi) long stretch of State Highway 130 between the Village of Cloudcroft and the intersection of SH 130 and Sunspot Road (Metric Corporation 1996; Steve Reed, NMSHTD, pers. comm. 1999). The project cleared all vegetation by scraping and widening the road and shoulders, constructing retaining walls, adding drainage ditches and culverts, and reconstructing a curve. In 1998 and 1999, checkerspot butterflies were located within the construction footprint (FS 1999a, 1999b; 1999d); however, none were observed during

surveys in 2000 and 2001 (E. Hein, pers. obs.). Some topsoil and larval food plants were stockpiled and used in the revegetation when the project was completed.

PROPOSED CRITICAL HABITAT

The primary constituent elements of critical habitat for the checkerspot butterfly include those habitat components providing for breeding, ovipositing (egg laying), diapausing, roosting or resting, or foraging areas and are described below. The proposed critical habitat designation includes the area found within an approximate 140 square km (54 square mi) polygon centered around the Village of Cloudcroft, Otero County, New Mexico. The primary constituent elements are: 1) elevation between 2,450 and 2,750 m (8,000 and 9,000 ft) within the mixed-conifer forest (Lower Canadian Zone) and within an approximate 140 square km (54 square mi) polygon centered around the Village of Cloudcroft, Otero County, New Mexico, south of the Mescalero Apache Nation boundary; 2) drainages, meadows, or grasslands; 3) supporting the known food plants New Mexico penstemon, sneezeweed, or valerian; 4) less than 5 percent canopy cover; and 5) composed of plants such as arrowleaf groundsel, curly-cup gumplant, figworts, penstemon, skyrocket, milkweed, Arizona rose, or Wheeler's wallflower. Areas adjacent to or linking areas that have some or all of the above elements and are sufficient to provide for dispersal between areas of checkerspot butterfly habitat are necessary for the conservation of the species and thus are proposed as critical habitat. Habitat that provides for dispersal may not support all of the other primary constituent elements.

ENVIRONMENTAL BASELINE

Under section 7(a)(2) of the Act, when considering the effects of the action on federally listed species, we are required to take into consideration the environmental baseline. Regulations implementing the Act (50 CFR 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone section 7 consultation, and the impacts of State and private actions that are contemporaneous with the consultation in progress. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

No projects have undergone formal conferencing for the proposed checkerspot butterfly or its proposed critical habitat; however, we have worked with the FS and NMSHTD to avoid or reduce adverse impacts to the checkerspot butterfly from proposed projects. Past and present Federal, State, private, and other human activities that may affect the checkerspot butterfly include: commercial and private development, recreational activities; development of recreation sites (campgrounds); issuance of rights-of-way; livestock grazing; vegetation manipulations (such as prescribed burns), and road construction and maintenance activities (e.g., Consultation numbers: 2-22-96-F-456; 2-22-98-I-248; 2-22-01-I-379). In addition, forest management activities on other adjacent lands, several residential development projects throughout the area,

and fire suppression affect the environmental baseline. Further, the risk of habitat loss due to catastrophic wildfire is extremely high within the Sacramento Ranger District.

The proposed action is located in an area currently managed by the FS and non-Federal entities. Various facilities and land uses (e.g., the Village of Cloudcroft, state highway 82, Sleepy Grass Campground) already exist in the area. The proposed development of the well will likely provide an additional source of water to supplement current and future needs for the Village of Cloudcroft and may support the growth of commercial or private development.

STATUS OF THE SPECIES (within the Action Area)

The project area is located within Apache Canyon near the junction of the entrance road to Sleepy Grass Campground and Highway 82, and on adjacent non-Federal lands. These areas are occupied by the checkerspot butterfly and contain proposed critical habitat. The Forest Service conducted surveys for the checkerspot butterfly within and adjacent to the proposed project area in from 1997-2001. These surveys documented the presence and successful reproduction of the checkerspot butterfly within meadows throughout Apache Canyon (FS 1999a 1999d, 2000a, 2000d, 2002) including within the area identified as the site for the water well (FS 2000, 2002). Checkerspot butterflies and foodplants were located every year, and, during surveys in 2001, both eggs and prediapause larvae were also located in the immediate project area proposed to be impacted.

We estimate that the area occupied by the checkerspot butterfly in Apache Canyon is approximately 30 acres. This same area also contains all of the primary constituent elements and is considered proposed critical habitat. For the purpose of analyzing the potential impacts of the proposed action an analysis area (approximately 40 feet around the project area) was examined. This analysis area encompassed predominantly Forest Service land, but also evaluates adjacent non-Federal lands (i.e., the area immediately east and south of highway 82 where the pipeline will be connected to an existing pipeline).

Apache Canyon currently contains Sleepy Grass Campground and Picnic Area. Forest road 24B and Highway 82 are adjacent to the proposed project and are used throughout the year, but especially during the checkerspot butterfly's active season. Consequently, the checkerspot butterfly population in this area is subjected to a variety of other impacts including trampling, road maintenance, and vegetation management (e.g., mowing). We have also recently completed a formal consultation that included a conservation recommendation for the checkerspot butterfly for this area of Apache Canyon that affected a small amount of suitable checkerspot butterfly habitat (Consultation Number 2-22-96-F-456).

EFFECTS OF THE ACTION

Our primary tasks in developing a conference opinion are to determine whether the proposed action is likely to jeopardize the continued existence of any proposed species or result in the

destruction or adverse modification of proposed critical habitat (50 CFR 402.10). The jeopardy/non-jeopardy determination is based on an evaluation of: 1) a species' status in the project area and range wide (see above sections); 2) the effects of the proposed action on the survival and recovery of a listed species (including effects of interdependent and interrelated actions); (3) the aggregate effects of other Federal actions on a listed species (e.g., amount of take occurring as a result of Federal actions subject to previous consultations); and (4) the cumulative effects on a listed species (i.e., future non-Federal actions that are reasonably certain to occur in the action area).

The proposed construction of a heated house around a newly drilled well, a cement pad and surrounding gravel bed, and development of a pipeline will result in the loss of approximately 3.7 acres of occupied habitat. Butterflies have been repeatedly observed in this area since 1997 and were documented at the project site during 2001 surveys. Hostplants were also observed throughout the project area. Some checkerspot butterfly larvae may stay in diapause for several years due to adverse weather conditions (e.g., drought). Consequently, the proposed action will likely result in the take of an unknown number of checkerspot butterflies. The take of these individuals will not jeopardize the continued existence of the checkerspot butterfly because the loss of a few individuals will not affect the population of butterflies in adjacent occupied habitat

Because the checkerspot butterfly has a life history pattern similar to other butterflies in the genus *Euphydryas* that exist as metapopulations, it is likely that this checkerspot butterfly has a metapopulation structure (Murphy and Weiss 1988; Harrison 1989; Hanski and Gilpin 1991). A metapopulation is a set of local populations within an area, where typically migration from one local population to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable habitat (i.e., dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitat. A metapopulation's persistence depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas by dispersal (Hanski 1999, Hanski and Gilpin 1991).

Habitat altering activities have likely eliminated or interrupted dispersal of butterflies between suitable habitat patches and thus affected the metapopulation dynamics of the checkerspot butterfly. For example, recent habitat-altering projects have likely fragmented the distribution of the checkerspot butterfly and eliminated checkerspot butterfly localities or prevented the checkerspot butterfly from moving between areas of suitable habitat (Murphy and Weiss 1988).

Although impacts of habitat-altering projects may have the potential to fragment the population between occupied areas, we do not believe that the construction of this water pipeline will result in the severe disruption of the metapopulation dynamics or the local checkerspot butterfly population. We believe this is a reasonable conclusion given that the surrounding occupied habitat will remain intact, and the areas being impacted are approximately 12 percent of the checkerspot butterfly habitat in Apache Canyon. Moreover, the Forest Service has included a conservation measure to ensure that impacts to the habitat are minimized to the extent feasible. The construction of the pipeline will temporarily impact approximately 3.6 acres, whereas the

infrastructure immediately surrounding the well will permanently impact 0.1 acre. Consequently, the majority of the project will result in temporary impacts to habitat. The impacted habitat along the pipeline will be restored immediately following installation, resulting in impacts to the habitat for no more than one or two growing seasons.

We also must consider indirect effects and the effects of interdependent and interrelated actions of this project to the checkerspot butterfly. Indirect effects are those that are caused by, or result from, the proposed action, and are later in time, but are reasonably certain to occur. Interrelated actions are actions that are part of a larger action, and are dependent on the larger action for their justification. Interdependent actions are actions that have no independent utility apart from the action under consideration. The use of access roads, field crews and vehicles in the project areas, operation and maintenance of the constructed structures and pipeline, and emergency repairs are considered interrelated and interdependent with the implementation of the current project. Affects of the project from indirect impacts and interdependent and interrelated actions should not be any greater than those described above, since the construction will occur within the construction footprint and field crews and vehicles will likely stay on developed roads (i.e., Forest Road 24B and highway 82). Operations and maintenance on the pipeline will likely not involve habitat altering activities over the entire project area, since the pipeline will be buried, which will further avoid or minimize permanent impacts to the habitat over the majority of the project area. Consequently, these affects are not expected to be significant and will not jeopardize the continued existence of the checkerspot butterfly.

This project contains all of the primary constituent elements of proposed critical habitat for the checkerspot butterfly. The construction of the project will temporarily destroy those checkerspot butterfly habitat components that provide for breeding, ovipositing (egg laying), diapausing, roosting or resting, and foraging. For example, one of the primary constituent elements that is composed of food plants for the checkerspot butterfly (i.e., New Mexico penstemon, sneezeweed, and valerian) occur within the action area and will be adversely affected by the project. Additionally, other plants that compose a primary constituent element occur or likely occur within the action area and will also be affected include arrowleaf groundsel, curly-cup gumplant, figworts, penstemon, skyrocket, milkweed, Arizona rose, or Wheeler's wallflower.

The proposed construction of the pipeline will result in the temporary impact to approximately 3.6 acres of proposed critical habitat that is occupied by the checkerspot butterfly. Additionally, the construction of the infrastructure immediately surrounding the well will permanently impact about 0.1 acre of proposed critical habitat. These impacts, when added to the environmental baseline, will not appreciably diminish the capability of the proposed critical habitat to satisfy the essential requirements of the checkerspot butterfly. To ensure that the majority of impacts to proposed critical habitat are short-term, the Forest Service has included a conservation measure to restore the habitat to pre-construction conditions. Because the surrounding proposed critical habitat will remain intact, we do not anticipate that the impacts from this project will result in the destruction or adverse modification of proposed critical habitat. Consequently, we conclude that

the project, as proposed, will not appreciably alter the value of proposed critical habitat for both the survival and recovery of the checkerspot butterfly.

We have also considered the indirect effects and the effects of interdependent and interrelated actions of this project on the proposed critical habitat of the checkerspot butterfly. The use of access roads, field crews and vehicles in the project areas, operation and maintenance of the constructed structures and pipeline, and emergency repairs are considered interrelated and interdependent with the implementation of the current project. Impacts from indirect affects and the interdependent and interrelated actions of this project should not be any greater than the direct impacts to proposed critical habitat, since the construction footprint and field crews and vehicles will likely stay on developed roads (i.e., Forest Road 24B and highway 82). Operations and maintenance of the pipeline will likely not involve habitat altering activities over the entire project area, because the pipeline will be buried. Therefore, we conclude that the affects of interdependent and interrelated actions and indirect impacts will not result in additional permanent impacts and will not result in the destruction or adverse modification of proposed critical habitat.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local, or private actions on endangered or threatened species or critical habitat that are reasonably certain to occur in the foreseeable future in the action area considered in this conference opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. Cumulative effects analysis as stated here applies to section 7 of the Act and should not be confused with the broader use of this term in the National Environmental Policy Act or other environmental laws.

The project area is located within the Lincoln National Forest, near Cloudcroft, New Mexico. It is surrounded by mostly National Forest land and private inholdings (e.g., subdivisions), Forest Service trails, existing infrastructure (e.g., powerlines), dispersed camping areas, and small communities and surrounding areas, where activities occur either seasonally or year-round. These activities have the potential to reduce the quality and quantity of occupied, unoccupied, and proposed critical habitat of the checkerspot butterfly, cause disturbance to checkerspot butterflies, and contribute as cumulative effects to the proposed action.

There has been a recent increase in commercial or private development projects on non-Federal lands. In addition, future actions within or adjacent to the Forest Service lands that are reasonably expected to occur include grazing, road construction, vegetation management (e.g., mowing or herbicide treatments), fuels management, fire suppression activities, and other associated actions. The major concern in assessing cumulative impacts is the further loss of currently occupied and unoccupied habitat or proposed critical habitat that contributes to a functioning metapopulation, including those areas necessary to provide connectivity between populations. Although we conclude that the proposed action, taken together with cumulative

effects, is not likely to jeopardize the continued existence of the proposed checkerspot butterfly or result in the destruction or adverse modification of proposed critical habitat, we believe that continuing habitat loss has the potential in the future, to disrupt the metapopulation dynamics of this species.

CONCLUSION

After reviewing the current status of the checkerspot butterfly, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's conference opinion that the action, as proposed, is not likely to jeopardize the continued existence of the proposed Sacramento Mountains checkerspot butterfly and is not likely to destroy or adversely modify proposed critical habitat.

We reached this conclusion for the following reasons: 1) the relatively low level of take of butterflies; 2) the minor effects to the checkerspot butterfly and its proposed critical habitat from the temporary impacts of the construction of the pipeline and the small area of occupied habitat and proposed critical habitat that will be permanently impacted; and 3) the implementation of the conservation measure to further minimize impacts or avoid take.

INCIDENTAL TAKE

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any such conduct. Harass is further defined by us as intentional or negligent actions that creates the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering. Harm is further defined by us to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of the agency action is not considered a prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The prohibitions against taking the species found in section 9 of the Act do not apply until the species is listed. However, the Service advises the Forest Service to consider implementing the following reasonable and prudent measures. If this conference opinion is adopted as a biological opinion following a listing or designation of critical habitat, these measures, with their implementing terms and conditions, will be non-discretionary.

The Forest Service has a discretion to regulate the activity that is covered by this incidental take statement. If the species is listed and the Forest Service: 1) fails to require that permittee adheres to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit, grant, or contract document, and/or 2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, we recommend that the Forest Service report the progress of the action and its impact on the species to the Service as specified in the incidental take statement.

Amount or extent of take

Based on the best available information concerning the checkerspot butterfly, the habitat needs of this species, the project description, and information furnished by the Forest Service, take is considered likely for the checkerspot butterfly. Nevertheless, because of the cryptic nature of the various life history stages of the checkerspot butterfly (e.g., eggs, larvae, chrysalis) and the variation in population sizes from year to year, it is difficult to estimate the number of individuals that will be taken with implementation of this project. Based upon the proposed project, it is estimated that approximately 3.7 acres (3.6 acres - temporarily impacted and .1 acre permanently impacted) of occupied habitat will be taken within the footprint of the project. However, using the information provided in the BA and our knowledge of the checkerspot butterfly and this site, we anticipate that some individual checkerspot butterflies within the 3.7 acres will be taken in the form of harm and harassment.

Effect of the take

In the accompanying conference opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the proposed Sacramento Mountains checkerspot butterfly or destruction or adverse modification of proposed critical habitat.

Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize take.

- 1) Minimize disturbance to the Sacramento Mountains checkerspot butterfly during project implementation, operations and maintenance, and emergency repairs.
- 2) Conduct all construction activities, operations and maintenance, and emergency repairs activities in a manner that will minimize modification and loss of Sacramento Mountains checkerspot butterfly habitat.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Forest Service and their employees, contractors, or subcontractors must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are nondiscretionary.

The following Terms and Conditions are established to implement Reasonable and Prudent Measure 1:

- 1.1 Conduct surveys prior to any impacts within suitable checkerspot butterfly habitat. These surveys should focus on locating New Mexico penstemon, valerian, or orange sneezeweed or any life stages of the checkerspot butterfly; and
- 1.2. If any life stages of the checkerspot butterfly are located, they should be relocated onto appropriate food plants (e.g., relocate pre-diapause larvae to New Mexico penstemon) within similar sites.

The following Terms and Conditions are established to implement Reasonable and Prudent Measure 2:

- 2.1. Any staging areas (i.e., areas where vehicles or equipment will be located during the construction of the project) should be situated within areas that do not contain New Mexico penstemon, valerian, or orange sneezeweed, or any life stages of the checkerspot butterfly. The staging areas should be clearly delineated (e.g., with surveys stakes or flagging) and the special use permittee should be informed of and adhere to these requirements;
- 2.2. The Forest Service shall ensure that any habitat that is proposed to be temporarily impacted by the project is revegetated with appropriate native plants, including the checkerspot butterfly's foodplants;
- 2.3. The Forest Service shall monitor the project to ensure compliance with the appropriate conditions contained within the special use permit, or shall otherwise ensure that project is implemented in a manner consistent with these terms and conditions; and
- 2.4 The Forest Service shall ensure that the habitat that is proposed to be revegetated remains free of non-native weeds (e.g., Russian knapweed (*Acroptilon repens*), musk thistle (*Carduus nutans*), oat grass, and teasel (*Dipsacus sylvestris*)).

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The recommendations provided here relate only to the proposed action and do not necessarily represent complete fulfillment of the agency's section 7(a)(1) responsibility for these species. In order for us to be kept informed of actions that either minimize or avoid adverse effects or that benefit listed species and their habitats, we request notification of the implementation of the conservation recommendations. We recommend the following conservation recommendations be implemented:

1. The Forest Service should work cooperatively with the Service and other entities to develop and implement a regional conservation strategy for the Sacramento Mountains checkerspot butterfly.
2. Inform the special use permittee that the impacts of this or other projects could be further minimized if implemented during the non-active season for the checkerspot butterfly (i.e., October - March).

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

DISPOSITION OF DEAD OR INJURED LISTED ANIMALS

Upon finding a dead, injured, or sick individual of an endangered or threatened species, initial notification must be made to the nearest Service Law Enforcement Office. In New Mexico, contact (505/346-7828) or the New Mexico Ecological Services State Office (505/346-2525). Written notification must be made within five calendar days and include the date, time, and location of the animal, a photograph, and any other pertinent information. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible condition. If feasible, the remains of intact specimens of listed animals shall be submitted to educational or research institutions holding appropriate State and Federal permits. If such institutions are not available, the information noted above shall be obtained and the carcass left in place.

Arrangements regarding proper disposition of potential museum specimens shall be made with the institution before implementation of the action. A qualified biologist should transport injured animals to a qualified veterinarian. Should any treated listed animal survive, we should be contacted regarding the final disposition of the animal.

REINITIATION - CLOSING STATEMENT


This concludes formal conference on the proposal to issue a special use permit for the Village of Cloudcroft water well and pipeline at Sleepy Grass, Sacramento Ranger District, Lincoln National Forest, New Mexico. You may ask the Service to confirm the conference opinion as a biological opinion issued through formal consultation if the Sacramento Mountains checkerspot butterfly is listed or critical habitat is designated. The request must be in writing. If the Service reviews the proposed action and finds that there have been no significant changes in the action as planned or in the information used during the conference, the Service will confirm the conference opinion as the biological opinion on the project and no further section 7 consultation will be necessary.

After listing of the Sacramento Mountains checkerspot butterfly as endangered/threatened and/or designation of critical habitat for the Sacramento Mountains checkerspot butterfly and any subsequent adoption of this conference opinion, the Federal agency shall request reinitiation of consultation if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may impact listed species or critical habitat in a manner or to an extent not considered in this conference opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this conference opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.

The incidental take statement provided in this conference opinion does not become effective until the species is listed and the conference opinion is adopted as the biological opinion issued through formal consultation. At that time, the project will be reviewed to determine whether any take of the Sacramento Mountains checkerspot butterfly or its habitat has occurred. Modification of the opinion and incidental take statement may be appropriate to reflect that take. No take of the Sacramento Mountains checkerspot butterfly or its habitat may occur between the listing of the Sacramento Mountains checkerspot butterfly and the adoption of the conference opinion through formal consultation, or the completion of a subsequent formal consultation.

In future communications regarding this project, please refer to consultation #2-22-02-F-012. If you have any questions or would like to discuss any part of this conference opinion, please contact Eric Hein of my staff at (505) 346-2525, extension 135.

Sincerely,



Joy E. Nicholopoulos
Field Supervisor

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