United States Department of the Interior

FISH AND WILDLIFE SERVICE
9325 South Alda Road
Wood River, Nebraska 68883

In Reply Refer to:
Re-eval of Nebraska Biological Evaluation for
Fed-Aid Transportation Program BA & Programmatic Agreement
2023-0068084

April 21, 2023

Justin Luther
Acting Program Delivery Team Leader
Federal Highway Administration, Nebraska Division
100 Centennial Mall North, Room 220
Lincoln, Nebraska 68508-3803

Dear Mr. Luther:

This responds to your March 13, 2023, e-mailed request for concurrence from the U.S. Fish and Wildlife Service (Service) regarding the renewal of the Nebraska Biological Evaluation Process (Process) under the Endangered Species Act of 1973; this renewal includes both the Federal-Aid Transportation Program in Nebraska (Program) and an inter-agency Programmatic Agreement (PA), both of which have been in place since 2012.

This programmatic effort was jointly developed by the Federal Highway Administration (FHWA), the Nebraska Department of Transportation (NDOT), the Nebraska Game and Parks Commission (NGPC) and the Service in 2012 and renewed in 2017. As discussed in your March 13, 2023, letter, the implementation of the Process and the PA have proven to decrease signatory agency workloads while allowing the agencies to focus on a more holistic approach to species recovery. The signatory agencies have met over the past six years to conduct audits, incorporate species status changes, and update assessment tools to improve the Process. The March 13 request included a Programmatic Biological Assessment (PBA) Re-evaluation that has assessed the effects of the Program's actions from using the consultation Process, including the suite of tools that were developed to specifically evaluate potential project impacts to species, and the implementation of the PA over the last five years.

Based on the information that has been provided within the Re-evaluated PBA and several years of annual reviews, the Service concurs that implementation of the Process for the Program, as also outlined in the PA, may affect but is not likely to adversely affect federally listed species and/or federally designated critical habitat. Species evaluated in the PBA that are included in this informal consultation include the following federally listed species: Black-footed ferret (*Mustela nigripes*), Blowout penstemon (*Penstemon haydenii*), Eastern black rail (*Laterallus jamaicensis jamaicensis*), Eskimo curlew (*Numenius borealis*), Gray wolf (*Canis lupus*), Pallid sturgeon *(Scaphirhynchus*

albus), Piping plover *(Charadrius melodus),* Rufa red knot *(Calidris canutus rufa),* Salt Creek tiger beetle *(Cicindela nevadica lincolniana),* Scaleshell mussel *(Leptodea leptodon),* Topeka shiner *(Notropis topeka),* Ute ladies'- tresses *(Spiranthes diluvialis),* Western prairie fringed orchid *(Platanthera praeclara*), and Whooping crane *(Grus Americana).* Impacts to federally designated critical habitat for Salt Creek tiger beetle, Topeka shiner, and Whooping crane are also included in this determination. Additionally, we acknowledge that the federally threatened American burying beetle (*Nicrophorus americanus*) and the endangered Northern long-eared bat (*Myotis septentrionalis*) were removed as species evaluated within the confines of the PA and Process, due to separately recognized programmatic consultation efforts that will address impacts related to these species.

Please contact our office if changes to the Process or PA occur or new information regarding federally listed species and/or critical habitat become available.

The Service commends FHWA, NDOT, and NGPC for the hard work that everyone has contributed to this consultation effort and its implementation over the years. The Process has allowed all agencies to work closely together and not only develop a strategy that streamlines consultations but also encourages transportation to integrate species specific conservation into projects that benefit trust resources throughout the state of Nebraska.

Sincerely,

MARK PORATH

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Date: 2023.04.21 14:22:21 -05'00'

Mark Porath
Nebraska Project Leader/Field Supervisor

cc: Melissa Marinovich, Assistant Division Administrator, Nebraska Game and Parks Commission
Jason Jurgens, Environmental Section Manager, Nebraska Department of Transportation