NEBRASKA
GAME PARKS

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April 13, 2023

Justin Luther
Nebraska Acting Project Delivery Team Lead
Federal Highway Administration
100 Centennial Mall North, Rm 220
Lincoln, NE 68508

Re: Biological Assessment, Nebraska Biological Evaluation Process for the Federal-Aid Transportation Program in Nebraska and Programmatic Agreement (Reevaluation)

Dear Mr. Luther:

Please reference your correspondence dated March 13, 2023. This letter is in response to your request for concurrence regarding the potential impacts that the implementation of the reevaluated and revised Nebraska Biological Evaluation Process (Process) for the Federal-Aid Transportation Program in Nebraska and Programmatic Agreement (PA) may have on state and federally listed endangered and threatened species and federally designated critical habitat in Nebraska. The Process and PA have both been in place since 2012 and was scheduled for renewal in January 2022. After four extensions and multiple meetings amongst the signatories, the Process and the PA were signed and renewed for an additional 5-year period in March 2023. We have completed our review of the programmatic consultation process as outlined in the Programmatic Biological Assessment (PBA) under Neb. Rev. Stat. § 37-807 (3) of the Nongame and Endangered Species Conservation Act (NESCA) and we offer the following comments.

In 2012, 2017, and again in 2023, staff from Federal Highway Administration (FHWA), Nebraska Department of Transportation (NDOT), Nebraska Game and Parks Commission (NGPC), and U.S. Fish and Wildlife Service (USFWS) signed the PA for streamlining the consultation process required under the Nebraska NESCA and the federal Endangered Species Act (ESA) for transportation projects receiving state and federal funds. As discussed in your 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 the assessment tools, as needed, to improve the Process and assure the agencies that the correct conservation efforts are being implemented to protect our state and federally listed species in Nebraska.

Based on the information in the PBA and several years of annual reviews, the NGPC concurs that the implementation of the Process for the Federal-Aid Transportation Program in Nebraska and the associated Programmatic Agreement "**May Affect but are Not Likely to Adversely Affect**" state and federally listed endangered or threatened species or federally designated critical habitat. Species evaluated in the BA that are included in this determination include the following: American ginseng (*Panax quinquefolius*), black-footed ferret (*Mustela nigripes*), blacknose shiner (*Notropis heterolepis*), blowout penstemon (*Penstemon haydenii*), Colorado butterfly plant (*Gaura neomexicana coloradensis*),

eastern black rail (*Laterallus jamaicensis jamaicensis*), eskimo curlew (*Numenius borealis*), finescale dace (Chrosomus *neogaeus*), gray wolf (*Canis lupus*), interior least tern (*Sternula antillarum athalassos*), lake sturgeon (*Acipenser fulvescens*), western massasauga (*Sistrurus catenatus tergeminus*), mountain plover (*Charadrius montanus*), northern redbelly dace *(Chrosomus eos),* pallid sturgeon *(Scaphirhynchus albus*), piping plover *(Charadrius melodus),* rufa red knot *(Calidris canutus rufa),* Salt Creek tiger beetle *(Cicindela nevadica lincolniana),* saltwort *(Salicornia rubra),* scaleshell mussel *(Leptodea leptodon),* small white lady's slipper *(Cypripedium candidum),* southern flying squirrel *(Glaucomys volans),* sturgeon chub *(Macrhybopsis gelida),* swift fox *(Vulpes velox),* thick-billed longspur (*Rhynchophanes mccownii*), timber rattlesnake *(Crotalus horridus),* 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 state and federal listed threatened American burying beetle (*Nicrophorus americanus*) and the state and federal listed 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.

If the Process and PA is changed or new information regarding endangered and threatened species becomes available, then this determination is no longer valid and further consultation with the NGPC will be necessary.

The NGPC appreciates the time and effort NDOT, FHWA, and USFWS have contributed to this consultation effort and implementation of the PA and Process. We look forward to continued coordination and cooperation with all agencies involved. Thank you for your dedication to protecting our state trust resources. If you have any questions or need additional information, please feel free to contact me at (402) 471-5422 or melissa.marinovich@nebraska.gov.

Sincerely,

Melissa Marinovich
Assistant Division Administrator
Planning and Programming Division
Nebraska Game and Parks Commission

ec: FHWA (Dillon Dittmer, James Simerl, Mark Johnson)
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USFWS (Mark Porath, Brooke Stansberry, Amanda Ciurej)