



## United States Department of the Interior

Fish and Wildlife Service  
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**In reply refer to:**

AESO/SE

2023-0031388

May 7, 2024

Mr. Brian Pauly and Ms. Rebecca Hopkins  
Western Area Power Administration  
Desert Southwest Region  
P.O. Box 6457  
Phoenix, Arizona 85005-6457

Dear Mr. Pauly and Ms. Hopkins:

Thank you for your correspondence of March 15, 2024, received on March 15, 2024. This letter documents our review of the Vail to Tortolita Transmission Line Project (Project). The Project is a joint venture between Tucson Electric Power (TEP) and the Western Area Power Authority (WAPA) and is a subsection of the larger Southline Transmission Project, for which Section 7 consultation required under the Endangered Species Act (ESA) has already been completed with the Bureau of Land Management (BLM) acting as the lead Federal agency. The project will occur in Pima and Pinal counties, Arizona, and this concurrence represents reinitiation of section 7 consultation on a discrete segment of the Southline Transmission Project in compliance with section 7 of the ESA as amended (16 U.S.C. 1531 et seq.). Your correspondence concluded that the proposed project may affect, but is not likely to adversely affect the threatened cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*; CFPO). We concur with your determination and provide our rationale below. This reinitiation only applies to the Vail to Tortolita portion of the Southline Transmission project and only to the CFPO. All remaining areas and species of the Southline Transmission project are covered under the existing section 7 consultation already completed for the Southline project, therefore, those portions of the Southline project must comply with the existing section 7 consultation as outlined therein under the lead of the BLM.

### DESCRIPTION OF THE PROPOSED ACTION

A complete description of the proposed action is included in Westland Resources' March 14, 2024 Cactus Ferruginous Survey Report and in meetings and email exchanges between staff.

The Vail to Tortolita Transmission Line Project is a joint undertaking by TEP and WAPA and entails the replacement of an existing 115-kilovolt (kV) WAPA-owned transmission line with a

230-kV double-circuit transmission line along a 64-mile stretch between TEP's Vail and Tortolita Substations (Project Area). In August 2023, following the issuance of a Biological Opinion for the Southline Transmission Project, the USFWS published a final ruling determining that CFPO meets the definition of a threatened species in accordance with section 3(20) and 4(a)(1) of the ESA. On September 25, 2023, WAPA met with the USFWS to discuss the Project and potential effects to CFPO. Two segments, totaling 12.5 miles in length, were delineated within the Project alignment as supporting suitable CFPO habitat and surveys for the CFPO were recommended. A variation to the Cactus Ferruginous Pygmy-owl Survey Protocol revised by the Arizona Game and Fish Department (AGFD) and the USFWS in 2000 was approved by the USFWS for Project clearance.

The current range of CFPO in Arizona is limited to the south-central portion of the state from the area around Tucson west to Organ Pipe Cactus National Monument. Since 2011, and at the time of the listing in 2023, CFPO continues to be absent from Pinal County and the city of Tucson and surrounding areas where it was observed as recently as the early 2000s (USFWS 2023). Based on survey efforts in 2020 and 2021, CFPO can no longer be found reliably in Organ Pipe Cactus National Monument, though they continue to be found farther north on the Tohono O'odham Nation and in the Altar Valley in Pima County (USFWS 2023).

The CFPO is commonly found in areas of thorny scrub and woodlands, often in proximity to giant cacti, scattered woodland patches in open landscapes, dry woods, and evergreen secondary growth (USFWS 2022). Notably, the owl thrives at habitat edges, including those adjacent to riparian and xeroriparian drainages, as well as those created by human settlements (Proudfoot and Johnson 2000). The species exhibits a nesting behavior utilizing woodpecker holes, natural cavities in giant cacti, trees, and sandbanks (Flesch 2003). While the composition of native and nonnative plant species varies across CFPO's range, common features include dense thickets or woodlands, the presence of large trees, saguaros, and columnar cacti suitable for nesting cavities at elevations typically below 1,200 m (Proudfoot and Johnson 2000). In Arizona, CFPO seldomly occur below 300 meters or above 1,220 meters (Proudfoot and Johnson 2000). Historically documented in cottonwood-mesquite forests and mesquite woodlands along rivers, current habitats primarily consist of Sonoran desertscrub communities in southern Arizona, characterized by xeroriparian vegetation and dominant tree species such as mesquite, ash, and hackberry (USFWS 2022).

The areas of the project that were determined to support suitable habitat for the CFPO include one 2.5-mile stretch of the Project Area in Pinal County, near Avra Valley. Much of this region consists of relatively flat landscapes of Sonoran Desert and urban areas with irrigated agricultural lands. Elevations along this segment range from approximately 1,860 feet to 1,900 feet above mean sea level (amsl). This segment also parallels the Los Robles Wash and enters the Santa Cruz River drainage basin at its northern terminus. Vegetation in the 2.5-mile segment of the Project Area is broadly mapped as Sonoran desertscrub, encompassing the Lower Colorado River subdivision (The Nature Conservancy 2012). Vegetation observed during site visits included creosotebush (*Larrea tridentata*), wolfberry (*Lycium* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis* sp.), and triangle-leaf bursage (*Ambrosia deltoidea*) mixed with saguaro (*Carnegiea gigantea*), ocotillo (*Fouquieria splendens*), and cholla species (*Cylindropuntia* spp.). Large, disturbed portions of the Project Area within this segment were

vegetated with invasive grasses and forbs including amaranth (*Amaranthus* sp.), buffelgrass (*Cenchrus ciliaris*), and tumble weed (*Salsola* sp.).

A second segment deemed suitable for CFPO surveys is a 10-mile stretch of the Project Area within the Tucson Basin and occurs on the eastern slopes of the Tucson Mountains in Pima County. Topography transitions from Sonoran desertscrub along the Tucson Mountains in the north to the flat Santa Cruz River drainage basin along the southern terminus. Much of this region is flat to rolling landscapes of Sonoran Desert and highly populated urban areas. This segment of the project ranges in elevation from approximately 2,100 feet to 2,300 feet amsl. The Santa Cruz River intersects and runs north along portions of the Project Area. While much of the Santa Cruz River is a dry riverbed, the release of wastewater effluent by the City of Tucson has created stretches of perennial flows originating in the city of Tucson. Vegetation in the 10-mile segment of the Project Area is broadly mapped as Sonoran desertscrub, encompassing the Lower Colorado River subdivision and Arizona Upland subdivision (The Nature Conservancy 2012). Vegetation observed during site visits included creosotebush, wolfberry, ironwood, foothills paloverde (*Parkinsonia microphylla*), acacias (*Acacia* sp.), mesquite, and triangle leaf bursage mixed with saguaro, prickly pear (*Opuntia* spp.), ocotillo (*Fouquieria splendens*), and cholla species. Large, disturbed portions of the Project Area within this segment were vegetated with invasive grasses and forbs including amaranth, buffelgrass, and tumble weed. Santa Cruz riparian areas included seep willow (*Baccharis salicifolia*), desert broom (*Baccharis sarothroides*), tamarisk (*Tamarix* sp.), and giant reed (*Arundo donax*).

Potential impacts to the CFPO resulting from the proposed action include potential disturbance from noise and human activity associated with construction activities, potential loss of habitat, including nest sites if saguaros are removed, and loss of habitat connectivity.

#### DETERMINATION OF EFFECTS

We concur with your determinations that the proposed action may affect, but is not likely to adversely affect the CFPO for the following reasons:

- It is extremely unlikely that the species currently occurs in the action area of the proposed project based on the negative survey information provided in Westland's 2024 survey report, habitat suitability, and existing land use in the action area. Therefore, any potential direct or indirect effects on the species are discountable.
- The CFPO is not known to be nesting in the action area. Any interactions of project activities related to the proposed action are likely to be limited to dispersing CFPO individuals which will be in the action area for only a limited time. These effects are insignificant.
- Vegetation disturbance or removal resulting in impacts to CFPO habitat elements will be relatively small in size, therefore, impacts to CFPO habitat will be insignificant.

Certain project activities may also affect species protected under the Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. sec. 703-712) and/or bald and golden eagles protected under the Bald and Golden Eagle Protection Act (Eagle Act). The MBTA prohibits the intentional taking, killing, possession, transportation, and importation of migratory birds, their

eggs, parts, and nests, except the FWS authorizes such action. The Eagle Act prohibits anyone, without a FWS permit, from taking (including disturbing) eagles, and including their parts, nests, or eggs. If you think migratory birds and/or eagles will be affected by this project, we recommend seeking our Technical Assistance to identify available conservation measures that you may be able to incorporate into your project.

With regard to the proposed action specifically, habitat within the project area is suitable to support the western burrowing owl (*Athene cunicularia hypugaea*) and this species is potentially located within the vicinity of the project area. The burrowing owl is an Arizona Species of Greatest Conservation Concern and is protected under the Federal Migratory Bird Treaty Act. If a burrowing owl(s) are determined to occupy the action area, we recommend that FWS be contacted to discuss if any particular measures that may be needed to avoid impacts to those burrowing owls.

More information on the MBTA and available permits can be retrieved from [FWS Migratory Bird Program web page](#) and [FWS Permits Application Forms](#). For information on protections for bald eagles, please refer to the FWS's National Bald Eagle Management Guidelines (72 FR 31156) and regulatory definition of the term "disturb" (72 FR 31132) published in the Federal Register on June 5, 2007, as well at the Conservation Assessment and Strategy for the Bald Eagle in Arizona ([Southwestern Bald Eagle Management Committee website](#)).

In keeping with our trust responsibilities to American Indian Tribes, by copy of this letter we are notifying Tribes that this proposed action may affect, and encourage you to invite the Bureau of Indian Affairs to participate in the review of your proposed action. We also encourage you to coordinate the review of this project with the Arizona Game and Fish Department.

Thank you for your continued coordination. No further section 7 consultation is required for this project at this time. Should project plans change, or if information on the distribution or abundance of listed species or critical habitat becomes available, this determination may need to be reconsidered. In all future correspondence on this project, please refer to consultation number 2023-0031388.

If you require further assistance or you have any questions, please contact Scott Richardson ([scott\\_richardson@fws.gov](mailto:scott_richardson@fws.gov)) or Julie McIntyre ([julie\\_mcintyre@fws.gov](mailto:julie_mcintyre@fws.gov)).

Sincerely,

Heather Whitlaw  
Field Supervisor

cc (electronic):

Mr. Bill Werner, Bureau of Land Management, Tucson Field Office, Tucson, AZ.

Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ (Attn: pep@azgfd.gov)

Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ (Attn: Cass Walker)

Director, Hopi Tribe Natural Resources Department, Kykotsmovi, AZ (Attn: Dr. Carrie Joseph)

Director, Pascua Yaqui Natural Resources Department, Tucson, AZ (Attn: Richard Valenzuela)

Director, San Carlos Apache Tribe Recreation & Wildlife Department, San Carlos, AZ (Attn: Tim Stevens)

Environmental Specialist, Western Regional Office, Bureau of Indian Affairs, Phoenix, AZ (Attn: Chip Lewis)

### Literature Cited

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\_\_\_\_\_. 2023. Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Cactus Ferruginous Pygmy-Owl. U.S. Department of the Interior. July 20, 2023. *Federal Register*, 88:46910-46950.