



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services

222 S. Houston, Suite A

Tulsa, Oklahoma 74127

In Reply Refer To:

FWS/R2/OKES/02-14-04-I-1067

October 6, 2004

Steve Nolan
Environmental Analysis and Compliance Branch
U.S. Army Corps of Engineers
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Dear Mr. Nolan:

This is in response to an August 10, 2004, letter from Mr. Larry Hogue requesting comments on a proposed land transfer at Lake Texoma. The proposed action would transfer 564 acres to the Oklahoma Commissioners of the Land with the land to be sold at fair market value. The precise location and proposed use of the 564 acres of land was not identified in the letter, but the land was stated to be adjacent to lands currently owned by and leased to the Oklahoma Department of Tourism for public park and recreational purposes.

Lacking precise information on the location of these lands, the U.S. Fish and Wildlife Service (Service) cannot provide you a site specific species list pursuant to section 7 of the Endangered Species Act (ESA), as amended. However, the federally-listed species likely to occur near Lake Texoma would include the bald eagle *Haliaeetus leucocephalus*, interior least tern *Sterna antillarum*, piping plover *Charadrius melodus*, whooping crane *Grus americana*, and American burying beetle *Nicrophorus americanus*. We are assuming that the state is attempting to acquire the land to enhance or extend recreational development currently occurring on adjacent lands and that there is some potential for impacts to federally-listed species. The direct and indirect effects of the action on these federally-listed species must be addressed before proceeding with your proposed action.

Cumulative Effects

The U.S. Army Corps of Engineers (Corps) frequently permits actions such as clearing of vegetation, docks, leases for marinas and concessions, donating, selling, or leasing lands, easements for pipelines, encroachment of private buildings, and other relatively small projects that cumulatively impact wildlife habitat at Corps projects. Lands previously available for public uses such as camping, hiking, hunting and fishing frequently then become unavailable to the general public. Often little or no mitigation is implemented for many of these actions. However, the Corps continues to address the impact of these small projects individually rather than cumulatively and rarely determines the effects to be anything but insignificant. The Corps even considers many such actions to be exempt from National Environmental Policy Act (NEPA) and

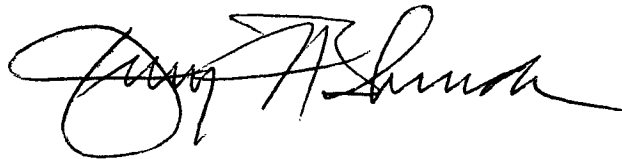
does not allow the Service or other entities to review and comment on these actions. In our opinion, the cumulative effect of these actions is that wildlife habitat is degraded, fragmented, or eliminated and little or no mitigation is provided to offset these impacts. Such an approach violates the intent of the Fish and Wildlife Coordination Act and NEPA.

This proposed action is another example of project lands and wildlife habitat being affected without any assessment of cumulative effects. The Service would not be opposed to most of these individual actions, provided the Corps considers the cumulative effects and adequately mitigates for those effects. Currently we are unaware of any efforts by the Corps to assess or mitigate for these cumulative effects. The Service has consistently stressed the need for the Corps to address the cumulative effects of numerous, relatively small habitat impacts on lands owned by the Corps. Similar comments were provided regarding shoreline management plans and this issue was discussed at a March 13, 2001, meeting at the Corps Tulsa District Office.

Additional comments on this subject were provided in a November 9, 2001, letter. The Corps responded in a December 17, 2001, letter that the Tulsa District was waiting for guidance from their headquarters office, but would respond to our comments after reviewing the information from headquarters. However, we are unaware of any progress being made in assessing and mitigating for cumulative effects related to out-grants, transfers, permits, leases, and other land-use issues on Corps lands. The potential cumulative effects of these and similar actions should be considered and adequately addressed.

The Service appreciates the opportunity to provide comments and we look forward to further coordination on the proposed action. If you have any questions, please contact Kevin Stubbs at 918-581-7458, extension 236.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry J. Brabander". The signature is fluid and cursive, with a large initial "J" and "B".

Jerry J. Brabander
Field Supervisor

cc: Director, ODWC, Attn: Natural Resources Sections, Oklahoma City, OK