
From: Wayland, Joshua
Sent: Friday, February 26, 2021 5:07 PM
To: Keller, Kevin
Cc: kkfloyd@venable.com; Karen McKee; Summerville, Alan; Mark Hemphill; Brian Barton; karlm@karlmorell.com
Subject: RE: UBRy- comments on the Draft BA

Thank you, Kevin. We will take these comments into consideration. Obviously, any changes to the BA in response to these, and especially any changes to OEA's recommended mitigation measures, would need to be coordinated with USFWS and the Cooperating Agencies prior to our moving forward with the Section 7 consultation process. I would note that the use of the term 'shall' in the mitigation measures is consistent with past Board practice, but I will share your concerns with Board staff and our cooperators.

Have a great weekend and thanks again.

Best,
Josh

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From: Keller, Kevin <Kevin.Keller@hdrinc.com>
Sent: Friday, February 26, 2021 4:33 PM
To: Wayland, Joshua <Joshua.Wayland@stb.gov>
Cc: kkfloyd@venable.com; Karen McKee <mmckee@7county.utah.gov>; Summerville, Alan <asummerville@vhb.com>; Mark Hemphill <mhemphill@rgpc.com>; Brian Barton <brian@jonesanddemille.com>; karlm@karlmorell.com
Subject: UBRy- comments on the Draft BA

Josh,

As we discussed, attached are our comments on the draft BA that you provided. We're recommending that the mitigation suggestions be changed from "shall"s to "proposes to". It is a minor change, but these measures are part of the proposed action and are being recommended to the USFWS as ways to minimize the effects to listed species or offset effects. The way it is currently written is that these "shall" all be implemented and there is no discretion on appropriateness or feasibility. Shall could be used in limited cases; however, there is not enough detail in some of the measures to fully understand the commitment of time and resources by the applicant. What is being proposed here reads more like the terms and conditions one would expect to see in the Biological Opinion rather than proposed conservation measures that can be included in the BA. Technically not required in a BA, conservation measures (the minimization and mitigation being proposed here) can be included in the BA to describe the measures the agency/applicant will include as part of the proposed action.

There are two additional comments regarding a couple of errors in the document.

Please let me know if you have further questions.

Kevin

Kevin Keller, PG

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