



Williamson County
Conservation Foundation
219 Perry Mayfield
Leander, TX 78641

March 12, 2019

Subcommittee on Water, Oceans, and Wildlife
Chairman Jared Huffman
RE: Commissioner Valerie Covey Oral Testimony

Chairman Huffman, Ranking Member McClintock, Members,

My name is Valerie Covey and I have the privilege to serve as a County Commissioner in Williamson County, Texas which is located in the northern part of the Central Texas growth corridor adjacent to Austin, our state capital. Williamson County continues to be one of the fastest growing counties in the nation. Since 2000, our population has increased approximately 120% and is expected to exceed a population of 600,000 by the next census. In 2004, Williamson County recognized the challenges that would be associated with balancing environmental quality along with the growing infrastructure needs of a metropolitan area. Today, Williamson County is home to six protected species. To develop responsibly and construct the infrastructure necessary for a fast-growing area, the County, in cooperation with the U.S. Fish & Wildlife Service (“USFWS”), created the Williamson County Regional Habitat Conservation Plan (“RHCP”) to streamline compliance with the Endangered Species Act (“ESA”) for both public and private development. For the past decade, I have served on the Williamson County Conservation Foundation (“the WCCF”) and currently serve as its President. In 2008, our RHCP received its ESA Section 10(a) incidental take permit, which has successfully been administered by the Conservation Foundation since its inception. In fact, our RHCP and Williamson County have been recognized and praised by the Service for its stewardship and being ahead of schedule for acquiring required habitat and meeting and exceeding conservation goals.

In general, RHCPs allow governmental entities and private landowners to develop critical infrastructure and land development projects in areas with known or potential endangered species in a systematic, timely and cost-efficient manner while preserving habitat and endangered species.

Section 9 of the ESA prohibits all persons—whether federal or non-federal—from “take” of species listed as endangered.^[1] The ESA and its implementing regulations broadly define “take” to include both direct actions—such as killing or shooting endangered species—and indirect actions—such as modifying species habitat in such a way that the species’ essential behavioral patterns are significantly altered. Section 7 and its implementing regulations allow the USFWS and National Marine Fisheries Service (“NMFS”)^[2] to issue an incidental take statement to federal agencies whose activities will result in take of listed species. In 1982, Congress amended section 10

of the ESA to provide a mechanism, known as an “incidental take permit,” by which a non-federal entity may obtain authorization to take listed species, so long as that take occurs incidentally to otherwise lawful activities, including land and infrastructure development. Section 10 of the ESA sets forth the specific process and requirements with which a non-federal entity must comply in order to obtain an incidental take permit. Among the requirements set forth in ESA section 10 is the provision of compensatory mitigation for impacts to the species covered by the permit and the preparation of a habitat conservation plan.

The Williamson County RHCP streamlines compliance with the ESA for landowners – school districts, businesses, developers, individuals and local government agencies – in the county. It establishes a uniform set of options for all the development activities planned that might have an impact on rare or threatened species. Prior to the establishment of our RHCP, all entities impacting endangered species needed to obtain an individual 10(a) permit from USFWS. The RHCP provides for timely (generally 30 business days) approvals for participation, much shorter than the 18 months to 2-year time frame for individual plan approval by USFWS. The WCCF employee responsible for administering the RHCP has processed over 120 projects in the last ten years. These are permits and reviews that the USFWS has not had to process and has saved the Service valuable time and resources. The RHCP offers a simplified, consistent option to comply with the ESA through voluntary participation.

When using the RHCP, processing times are shortened, costs are controlled, and predictability is increased. Activities under the RHCP also help protect other species from becoming listed as endangered in the future. At the same time, our RHCP honors the county’s tradition of good land stewardship. The WCCF and its partners are providing leadership in regional planning for endangered species conservation.

The RHCP covers all the endangered species known to exist in the plan area of Williamson County, plus “candidate species” and “species of concern.” The endangered species are: one endangered song bird (golden-cheeked warbler) and two karst invertebrates (Bone Cave harvestman, and Coffin Cave mold beetle). The Georgetown and Jollyville Plateau salamanders, both candidate species, are also covered by the plan. Several other reptiles, amphibians, and invertebrates, which are rare, or for which limited scientific information currently exists, may also be covered by the plan. These species all occur along or west of the Interstate 35 corridor.

While our RHCP has worked well, the main challenge we have experienced is the inability to fully utilize the RHCP for projects with a federal nexus. Williamson County has encountered on numerous occasions an inconsistent use by regional and local USFWS offices of the permitting process for Federal action projects which has cost the State of Texas and the County millions of dollars in redesigns, re-evaluations, increased right-of-way and construction costs, and has unnecessarily caused inefficiencies of both personnel and budget for the federal agencies.

The following example summarizes a project that required ESA Section 7 consultation for impacts to endangered species because funding included federal monies and thus created a federal nexus. Although Texas Department of Transportation (“TxDOT”) was allowed to mitigate through our RHCP, it was not

allowed to participate which caused deadly delays and an additional cost of approximately \$11 million.

SH 195 is a state highway that runs from Interstate 35 in Georgetown north to FM 439 in Killeen. SH 195 leads to the entrance of Fort Hood, the largest military post in the free world. Before construction was completed on this roadway, SH 195 was called the “Highway of Death.” This highway was so dangerous that the commanding general of 3 Corps issued an order prohibiting its use by military personnel; this is critical because it is the only direct route from Fort Hood to IH-35 and is imperative to facilitating vehicle movement in the event of a troop deployment.

Planning and design for the widening of SH 195 took approximately 10 years due to right-of-way (“ROW”) acquisition delays. During that time, redesign included the consideration of elevating a portion of SH 195 to avoid habitat impacts, numerous meetings with government officials, and preparation of Biological Opinions. An ESA Section 7 consultation occurred and as a result, TxDOT spent an additional \$1.2 million acquiring a second cave to not delay these critical infrastructure improvements any further. That purchase would have been unnecessary if they had participated in the RHCP. Additionally, the SH 195 project delays resulted in significant increases of over \$9.7 million in ROW costs.

For many years, various state and local agencies within the State of California have obtained large-scale, programmatic incidental take permits or RHCPs under section 10 of the ESA to streamline ESA compliance, protect and preserve listed species and critical habitat, and ensure that critical infrastructure and economic development may occur in an efficient manner.

While federal projects are subject to the consultation requirements of ESA section 7, USFWS offices in California have significantly streamlined their review of federal projects that comply with the minimization and mitigation measures of the relevant RHCP. This streamlining has saved both the taxpayers of California and USFWS itself significant time and resources and is a common-sense solution to ESA compliance.

While every USFWS local and regional office has the discretion to implement the process followed in California, some USFWS offices in the country have not allowed streamlining of federal projects even where those projects commit to the same minimization and mitigation measures set forth in existing RHCPs. Instead, in those regions, state and local agencies whose projects have a federal nexus often must go through multiple, duplicative steps in order to comply with the ESA, which is costly, time consuming, and taxes the resources of both the state or local agency and USFWS. In some cases, these duplicative processes result in less conservation for listed species because compensatory mitigation is not required under an ESA section 7 consultation.

We highly encourage consistent RHCP use by USFWS where a federal nexus project qualifies for and receives incidental take authorization through a regional habitat conservation plan; the project proponent should not then be required to seek further approval(s) from the USFWS in connection with that project. Instead, there should

be an expedited consistency review process wherein the USFWS determines whether the underlying activity is within the geographic boundaries served by the RHCP, whether the take sought to be authorized is within the limits of the incidental take permit, and whether the activity is of a type covered by the RHCP. Such determinations should take no more than 30 days and should be accompanied by a letter or memorandum setting forth the conclusion of the Service. When the determination is made that a federal project is, in fact, consistent with the relevant RHCP, further compliance review should not be necessary. Especially, since the USFWS's approval of a RHCP and issuance of an incidental take 10(a) permit must go through an ESA Section 7 consultation, which means that the USFWS has already determined that the question of jeopardy does not exist for the listed species or designated critical habitat.

In summary, RHCPs can be very efficient and effective tools for the protection of endangered and threatened species while providing certainty for development whether it be a private developer, a school district or other governmental agencies. Also, a regional approach providing larger habitat areas serve the species much better than smaller size mitigation. RHCPs can also reduce project costs by eliminating unnecessary project development delays and avoid duplication of resources while also providing an overall benefit to the species.

But this is true only if RHCPs are administered uniformly across all regions of the USFWS for federal nexus and non-federal projects alike. What we are requesting is not to circumvent any part of the ESA, but rather, to be allowed to use the tools that the law provides. While I am here today to support the use of RHCPs, I am also asking for your support to direct the USFWS to ensure the consistent use of these regional habitat conservation plans across the regions of the US Fish & Wildlife Service and to allow for participation in an RHCP by regulated agencies and on all projects with a federal nexus.

Please contact me with any questions you may have at (512) 943-3370 or comm3@wilco.org.

Sincerely,



Valerie Covey
Williamson County Commissioner Pct. 3
Williamson County Conservation Foundation, President

[1] *Id.* at 1538. While section 9 of the ESA applies only to species listed as endangered, U.S. Fish and Wildlife Service regulations extent the “take” prohibition to most species listed as threatened. 50 C.F.R. § 17.31.

[2] Although both USFWS and NMFS administer the ESA, the focus of this letter is on USFWS administration thereof.