

TIER 3 CATEGORICAL EXCLUSION

**ARDOT JOB BR7615
FAP STPB-0076(297)
MULBERRY RIVER STR. & APPRS. (S)
CO. RDS. 45 & 67
CRAWFORD AND FRANKLIN COUNTIES**

Submitted Pursuant to 42 U.S.C. 4332(2)

By the

U.S. Department of Transportation

Federal Highway Administration

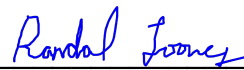
And the

Arkansas Department of Transportation

September 2022

September 22, 2022

Date of Approval



Randal Looney
Environmental Coordinator
Federal Highway Administration

The Environmental Division reviewed the referenced project and determined it falls within the definition of the Tier 3 Categorical Exclusion as defined by the ARDOT/FHWA Programmatic Agreement on the processing of Categorical Exclusions. The following information is included for your review and, if acceptable, approval as the environmental documentation for this project.

The purpose of this project is to replace two bridges over the Mulberry River in Crawford and Franklin Counties with a single bridge. The most recent bridge inspection report rated the condition of Str. 13091 as “poor”, indicating the presence of advanced deterioration. Total length of the project is approximately 0.30 mile. A project location map is attached.

Str. 13090 on County Road 45 is approximately 59’ long and 13.5’ wide. Str. 13091 on County Road 67/Wire Road is approximately 305’ long and 11’ wide. Both structures consist of a single travel lane. The proposed bridge will be approximately 622’ long and 28’ wide and have two 11’ wide travel lanes with 3’ wide shoulders. There is no existing right of way. The proposed right of way width will range from 70’ to 200’. Approximately 3.8 acres of new right of way will be acquired.

Design data for the project is as follows:

Design Year	Average Daily Traffic (vpd)	Percent Trucks	Design Speed (mph)
2022	370	8	35
2043	440		

There are no relocations, environmental justice concerns, underground storage tanks/hazardous wastes, or wetlands associated with this project. Approximately 1.7 acres of Prime Farmland will be converted to transportation use; Form NRCS-CPA-106 is attached.

The Pratt through truss bridge carrying County Road 67/Wire Road over the Mulberry River was built in 1929 and is listed in the National Register of Historic Places. As part of the ARDOT Historic Bridge Process, the Historic Bridge Analysis Committee (HBAC) met and determined that ARDOT could not rehabilitate or reuse the bridge as a couplet. Crawford and Franklin Counties were not willing to retain ownership of a bridge not in vehicular service. Additionally, the alignment is needed for a portion of the new bridge to connect to the current roadway on the river’s south side. The bridge was then marketed to federal, state, and local entities for reuse at a different location. The City of Mulberry responded requesting that the bridge be relocated for pedestrian use under their ownership. After

HBAC's review and acceptance of the City of Mulberry's proposal, a Memorandum of Agreement (MOA) was executed by the Federal Highway Administration, Arkansas Historic Preservation Program, Crawford County, Franklin County, the City of Mulberry, and ARDOT granting transfer of ownership of the bridge to the City of Mulberry and approving its relocation to the Mulberry City Park. No other structures or archeological sites eligible for or listed on the National Register of Historic Places will be impacted by the proposed project. The State Historic Preservation Officer clearance and bridge MOA are attached.

Based on the ARDOT noise policy, a noise analysis is not required for this project. The bridge replacements will not involve adding capacity, substantially changing the roadway alignment, or exposing noise sensitive land uses to traffic noise sources. In compliance with federal guidelines, local authorities will not require notification.

This project has been determined to generate minimal air quality impacts for Clean Air Act criteria pollutants and has not been linked with any special mobile source air toxics (MSAT) concerns. As such, this project will not result in changes in traffic volumes, vehicle mix, basic project location, or any other factor that would cause a substantial increase in MSAT impacts of the project from that of the no-build alternative.

Crawford and Franklin Counties participate in the National Flood Insurance Program. The project lies within the Zone A Special Flood Hazard Area. The final project design will be reviewed to confirm that the design is adequate and that the potential risk to life and property are minimized. Adjacent properties should not be impacted nor have a greater flood risk than existed before construction of the project. None of the encroachments will constitute a substantial floodplain encroachment or risk to property or life.

The official species list obtained through US Fish and Wildlife Service's (USFWS) Information for Planning and Consultation website identified the following species as potentially occurring within the project area: gray bat (*Myotis grisescens*), northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), American burying beetle (*Nicrophorus americanus*), Missouri bladderpod (*Physaria filiformis*), and the monarch butterfly (*Danaus plexippus*).

Utilizing the Arkansas Determination Key and due to the lack of suitable habitat for the bird and beetle species, it has been determined that the project will have "no effect" on the Eastern Black Rail, Piping Plover, Red Knot, American burying beetle, and Missouri bladderpod. Utilizing the Arkansas Determination Key, it has

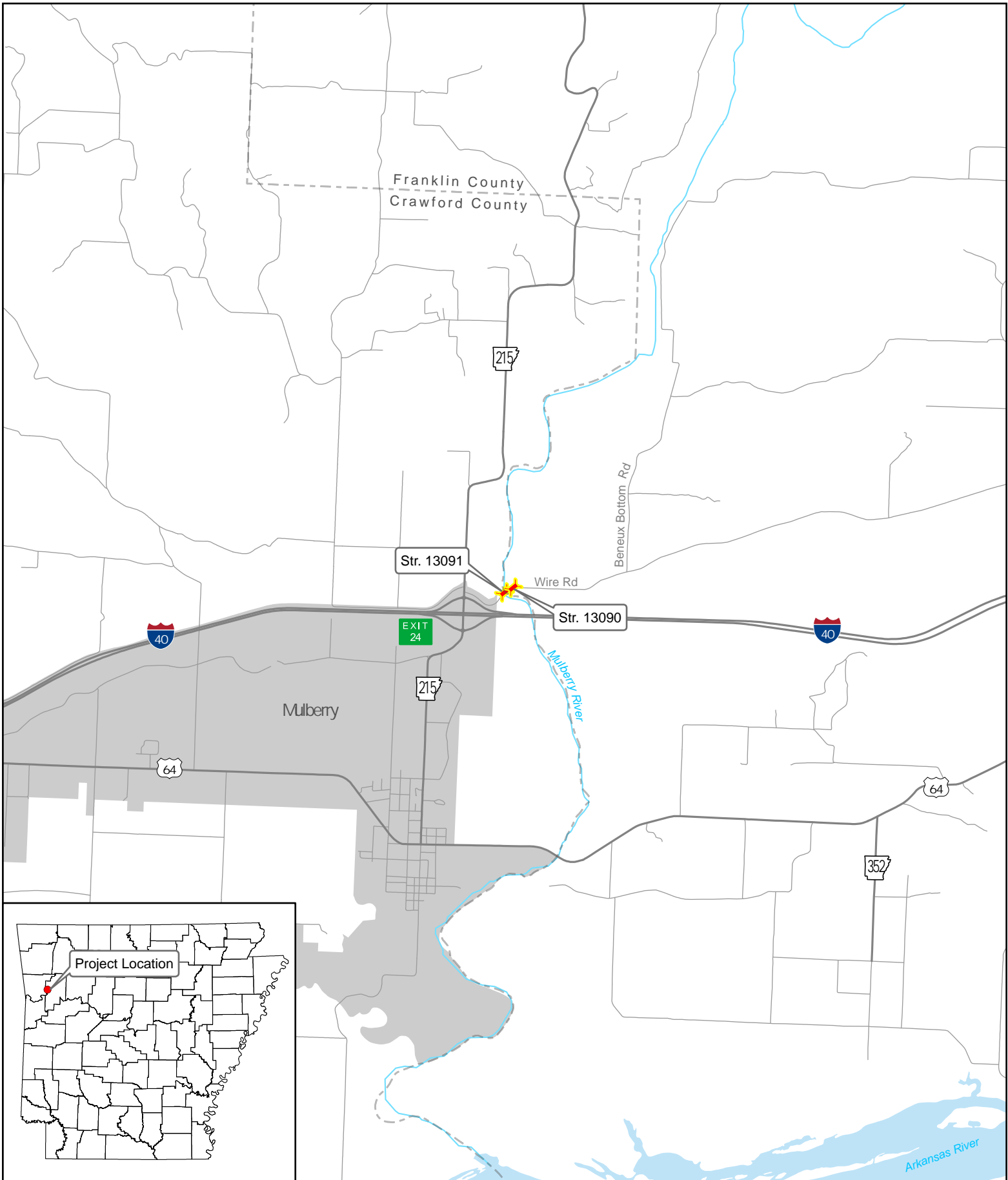
been determined that the project “may affect but is not likely to adversely affect” Missouri bladderpod, gray bat and Ozark big-eared bat.

Utilizing the Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-Eared Bat, it has been determined that the project “may affect and is likely to adversely affect” the Indiana bat. ARDOT will contribute \$3,009 from the Indiana bat Tracking Project for compensatory mitigation. USFWS correspondence is attached.

The monarch butterfly is a candidate species, and as such, is not federally protected under the Endangered Species Act. However, the USFWS recommends agencies implement conservation measures for candidate species in action areas, as these are species by definition, that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

Permanent impacts to the Mulberry River due to pier construction, within the channel, total 0.003 acre, while temporary impacts to the Mulberry River due to existing pier removal total 0.003 acre. Construction of the proposed project should be allowed under the terms of a Nationwide 14 Section 404 Permit for Linear Transportation Projects as defined in the Federal Register 86(245):73522-73583.

No other adverse environmental impacts were identified. The checklist used to verify consideration of potential environmental impacts is attached.



Franklin County
Crawford County

215

Beneux Bottom Rd

Str. 13091

Wire Rd

Str. 13090

EXIT
24

Mulberry River

Mulberry

40

64

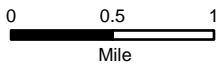
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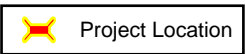
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Arkansas River



Job BR7615
Mulberry River Str. & Apprs.
Crawford and Franklin Counties





Asa Hutchinson
Governor
Stacy Hurst
Secretary

April 13, 2021

Mr. John Fleming
Division Head
Environmental Division
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261

Re: Franklin County – General
Section 106 Review – FHWA
Mulberry River Str. & Apprs. (S)
County Road 67
ARDOT Job Number BR7615
AHPP Tracking Number 106131.02

Dear Mr. Fleming:

The staff of the Arkansas Historic Preservation Program (AHPP) reviewed the Project Identification Form (PIF) for the above-referenced job in Section 24, Township 10 North, Range 29 West in Franklin County. As described, the undertaking entails replacing Bridges 13090 and 13091 on County Road 67. In correspondence dated March 5, 2021, the AHPP concurred that Bridge 13090 is not eligible for inclusion in the National Register (AHPP Tracking Number 106131.01). Bridge Number 13091 (AHPP Resource Number FR0194 / Mulberry River Bridge / Silver Bridge) is listed in the National Register. One new bridge will replace both extant bridges. The survey area for the current project totals approximately 2.6 acres. The City of Mulberry agreed to take ownership of Bridge 13091. Moving the bridge will cause an adverse effect to the historic property. An associated memorandum of agreement (MOA) will govern the resolution of the adverse effect. The AHPP concurs with the covenants in the MOA and has moved the agreement forward for signature by the State Historic Preservation Officer.

Based on the provided information, including the covenants provided for by the MOA, the AHPP concurs with a finding of **no adverse effect pursuant to 36 CFR § 800.5(b)** for the proposed undertaking.

Tribes that have expressed an interest in the area include the Cherokee Nation, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Muscogee (Creek) Nation, the Osage Nation, the Quapaw Nation, the Shawnee Tribe, and the United Keetoowah Band of Cherokee Indians. We recommend consultation in accordance with 36 CFR § 800.2(c)(2).

Thank you for the opportunity to review this undertaking. If you have any questions, please contact Eric Mills of my staff at (501) 324-9784 or eric.mills@arkansas.gov.

Sincerely,

for
Scott Kaufman
Director, AHPP

cc: Mr. Randal Looney, Federal Highway Administration
Dr. Melissa Zabecki, Arkansas Archeological Survey

**FARMLAND CONVERSION IMPACT RATING
FOR CORRIDOR TYPE PROJECTS**

PART I (To be completed by Federal Agency) Job BR7615	3. Date of Land Evaluation Request	4. Sheet 1 of _____
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1. Name of Project	5. Federal Agency Involved
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2. Type of Project	6. County and State
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PART II (To be completed by NRCS)	1. Date Request Received by NRCS	2. Person Completing Form
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3. Does the corridor contain prime, unique statewide or local important farmland? (If no, the FPPA does not apply - Do not complete additional parts of this form). YES <input type="checkbox"/> NO <input type="checkbox"/>	4. Acres Irrigated Average Farm Size
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5. Major Crop(s)	6. Farmable Land in Government Jurisdiction Acres: _____ %	7. Amount of Farmland As Defined in FPPA Acres: _____ %
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8. Name Of Land Evaluation System Used	9. Name of Local Site Assessment System	10. Date Land Evaluation Returned by NRCS
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PART III (To be completed by Federal Agency)	Alternative Corridor For Segment			
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	Corridor A	Corridor B	Corridor C	Corridor D
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A. Total Acres To Be Converted Directly				
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B. Total Acres To Be Converted Indirectly, Or To Receive Services				
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C. Total Acres In Corridor				
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PART IV (To be completed by NRCS) Land Evaluation Information				
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A. Total Acres Prime And Unique Farmland				
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B. Total Acres Statewide And Local Important Farmland				
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C. Percentage Of Farmland in County Or Local Govt. Unit To Be Converted				
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D. Percentage Of Farmland in Govt. Jurisdiction With Same Or Higher Relative Value				
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PART V (To be completed by NRCS) Land Evaluation Information Criterion Relative value of Farmland to Be Serviced or Converted (Scale of 0 - 100 Points)				
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PART VI (To be completed by Federal Agency) Corridor Assessment Criteria (These criteria are explained in 7 CFR 658.5(c))	Maximum Points			
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1. Area in Nonurban Use	15			
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2. Perimeter in Nonurban Use	10			
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3. Percent Of Corridor Being Farmed	20			
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4. Protection Provided By State And Local Government	20			
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5. Size of Present Farm Unit Compared To Average	10			
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6. Creation Of Nonfarmable Farmland	25			
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7. Availability Of Farm Support Services	5			
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8. On-Farm Investments	20			
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9. Effects Of Conversion On Farm Support Services	25			
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10. Compatibility With Existing Agricultural Use	10			
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TOTAL CORRIDOR ASSESSMENT POINTS	160			
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PART VII (To be completed by Federal Agency)				
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Relative Value Of Farmland (From Part V)	100			
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Total Corridor Assessment (From Part VI above or a local site assessment)	160			
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TOTAL POINTS (Total of above 2 lines)	260			
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1. Corridor Selected:	2. Total Acres of Farmlands to be Converted by Project:	3. Date Of Selection:	4. Was A Local Site Assessment Used? YES <input type="checkbox"/> NO <input type="checkbox"/>
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5. Reason For Selection:

Signature of Person Completing this Part:	DATE
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Joshua Graham

NOTE: Complete a form for each segment with more than one Alternate Corridor



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Arkansas Ecological Service Field Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032

September 21, 2022



Mr. John Fleming
c/o Mickey Matthews
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, Arkansas 72209

Project code: 2022-0084421

RE: ARDOT Job # BR7615 - Mulberry River Str. & Apprs. (S)

Dear Mr. Fleming:

The U.S. Fish and Wildlife Service (Service) reviewed your project plans, mitigation calculations, the proposed Arkansas Department of Transportation (ARDOT) Job # BR7615 - Mulberry River Str. & Apprs. (S), Crawford and Franklin counties, Arkansas (the Project). We also reviewed the associated likely to adversely affect (LAA) consistency letter dated August 16, 2022, and request to verify that ARDOT may rely on the February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the federally listed endangered Indiana Bat (IBAT) (*Myotis sodalis*) and/or federally listed threatened Northern Long-eared Bat (NLEB) (*Myotis septentrionalis*). Our comments are provided in accordance with the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.).

ARDOT provided the follow assessment of the action (abbreviated):

ARDOT is replacing the Wire Road bridge over the Mulberry River in Crawford and Franklin Counties on slightly new location to the south.

I have attached the IPAC species list for your convenience. The project should have no effect on the American Burying Beetle (*Nicrophorus americanus*), Eastern Black Rail (*Laterallus jamaicensis ssp. jamaicensis*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*) due to limited scope of the project, lack of habitat, and distance to known populations as indicated in the USFWS Arkansas DKey consistency letter. The Arkansas DKey determined the project is not likely to adversely affect the Missouri Bladderpod (*Physaria filiformis*), the Ozark Big-eared Bat (*Corynorhinus (=Plecotus) townsendii ingens*), and the Gray Bat (*Myotis grisescens*), and may affect the Indiana Bat (*Myotis sodalis*) and Northern Long-eared Bat (*Myotis septentrionalis*).

FHWA, FRA, FTA Programmatic Biological Opinion for Transportation Projects within the Range of the Indiana Bat and Northern Long-eared Bat (PBO) determination key within IPaC provided a likely to adversely affect consistency letter

(attached) for the project. ArDOT is proposing to use \$3,009 from the Indiana Bat Tracking Project as compensatory mitigation.

The Arkansas Department of Transportation is requesting concurrence with these effects determinations.

ARDOT determined that the Project is likely LAA the IBAT. The Service concurs with this determination because of the proximity of known species sites and foraging range to the project location and the occurrence of suitable foraging habitat for this species that exists on and adjacent to the site. A determination of LAA for IBAT is appropriate based on the distance from the existing roadway and amount of suitable habitat being lost. The conservation measures being proposed, pup season clearing restriction provision, site assessment and bridge survey results, and the proposed implementation of all required avoidance and minimization measures will help to mitigate effects in accordance with the BO.

As stated in the Consistency Letter, the Service concurs with the "no effect" and "NLAA" determination(s) for the listed species identified. No further consultation for this project is required for these species. The verification letter confirms you may rely on effect determinations provided in the Arkansas Determination Key for project review and guidance for federally listed species to satisfy agency consultation requirements under Section 7(a)(2) of the ESA of 1973 (87 Stat. 884, as amended 16 U.S.C. 1531 et seq.; ESA)." Furthermore, the Service reviewed your supplemental determination of "no effect" for Missouri Bladderpod and agrees with your assessment and concurs with your determination.

ARDOT conducted a bridge and structure assessment and found no signs of bat activity. ARDOT will place a special clearing requirements for Indiana and Northern Long-eared bats special provision on the job contract to ensure no direct impacts to IBAT and NLEB. A water pollution control special provision will be placed on the job contract to minimize the impacts of project activities on aquatic insects, an important food source for these species.

We confirm that the proposed Project's effects are consistent with those analyzed in the BO. The Service determined that projects consistent with the conservation measures and scope of the program analyzed in the BO are not likely to jeopardize the continued existence of IBAT and NLEB. In coordination with your agency and the other sponsoring Federal Transportation Agencies, the Service will re-evaluate this conclusion annually in-light-of any new pertinent information under the adaptive management provisions of the BO.

Indiana Bat

The Service anticipates that tree removal associated with the proposed project will cause incidental take of IBAT. As described in the Incidental Take Statement (ITS) of the BO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental taking resulting from BO projects using the proposed acreage of tree removal from IBAT suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Project will remove 0.3 acre of trees from habitat that is suitable for the IBAT. All tree removal will occur in winter and comply with all other conservation measures in the BO. Based on the BO, 1.6 acres are anticipated to not result in adverse effects, and 0.3 acre are anticipated to result in adverse effects. ARDOT uses the mitigation ratio of 1.5, respectively, from Table 3 of the BO to calculate the compensatory mitigation required to offset these adverse impacts for a total of 0.45 acre of trees that is suitable for the IBAT.

In order to comply with the mitigation requirements of the BO, the ARDOT will contribute \$3,009 to The Conservation Fund (TCF), the Program Sponsor, to compensate for clearing approximately 0.3 acre of trees in suitable habitat within 1 year of this letter or prior to the start of construction, whichever is earliest. These calculations are based on the mitigation identified above² and the 2021 Land Use Values in Table 2 of Exhibit E in TCF's ILF Instrument³. If payment is made later than 1 year from the date of this letter, the mitigation cost may change as a result of updated land use values in Table 2 of Exhibit E.

The purchase of species conservation credits and/or in-lieu fee contributions shall occur prior to construction of a transportation project covered under this programmatic consultation. Exceptions to this program stipulation include emergency projects that do not require a letting prior to construction. In these cases, purchase of credits and/or in-lieu fee contributions shall occur within three months of completion of the project. This timeframe allows for measuring the acres of habitat affected by the emergency project and for financial processing.

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of IBAT take and exempted from the prohibitions against incidental taking. Such exemption is effective as long as your agency implements the reasonable and prudent measures (RPM) and accompanying terms and conditions of the BO's ITS.

The sole RPM of the BO's ITS requires the Federal transportation agencies to ensure that state and local transportation agencies, who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA section 7 compliance using the BO. The implementing terms and conditions for this RPM require the Federal transportation agencies to offer training to appropriate personnel about using the BO, and about promptly reporting sick, injured, or dead bats (regardless of species or any other federally listed species) located in the project action area.

Northern Long-eared Bat

The Service anticipates that tree removal associated with the proposed project will cause incidental take of NLEB. However, the project is consistent with the BO, and such projects will not cause take of NLEB that is prohibited under the ESA section 4(d) rule for this species (50

¹ https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ILF_ratios_transportation_agencies.pdf

² XX acres * XX ratio

³ <https://www.fws.gov/media/exhibit-e-fee-schedule-range-wide-indiana-bat-lieu-fee-program>

CFR §17.40(o)). Therefore, the take of NLEBs resulting from this project does not require exemption from the Service.

Monarch Butterfly

The Monarch Butterfly is a candidate species, and as such, is not federally protected under the Endangered Species Act. However, the Service recommends agencies implement conservation measures for candidate species in action areas, as these are species by definition that may warrant future protection under the Act. ARDOT will plant native wildflowers after construction as a conservation measure.

Reporting Dead or Injured Bats

The ARDOT, its state/local cooperators, and any contractors must take care when handling dead or injured IBATs and/or NLEBs, or any other federally listed species that are found at the Project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service Office.

Re-initiation Notice

This letter concludes consultation for the proposed Project, which qualifies for inclusion in the BO issued to the Federal Transportation Agencies. To maintain this inclusion, a re-initiation of this Project-level consultation is required where the ARDOT's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. the amount or extent of incidental take of IBAT is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that the Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- the Project removes trees from more than 0.3 acre of habitat suitable for the IBAT.
- the Project takes more than 5 IBATs resulting from work on the Wire Rd.
- Mulberry River Bridge.

Mr. John Fleming

5

In instances where the amount or extent of incidental take is exceeded, the Federal Highway Administration/Arkansas Department of Transportation is required to immediately request a re-initiation of formal consultation. Please note that the Service cannot exempt from the applicable ESA prohibitions any Action-caused take that exceeds the amount or extent specified in the ITS of this BO that may occur before the reinitiated consultation is concluded.

We appreciate your continued efforts to ensure that this Project is fully consistent with all applicable provisions of the BO. If you have any questions regarding our response or if you need additional information, please contact Lindsey Lewis at lindsey_lewis@fws.gov or (501) 513-4489.

Sincerely,

For Melvin L. Tobin
Field Supervisor

cc: Project File
Read File

Filename: C:\Users\lilewis\Documents\PROJECTS\FY2022\ARDOT\ARDOT Job Br7615 Mulberry River Str Apprs\20220919_Ltr_ARDOT Job Br7615 Mulberry River Str Apprs - LCL.docx



ARKANSAS DEPARTMENT OF TRANSPORTATION

ArDOT.gov | IDriveArkansas.com | Lorie H. Tudor, P.E., Director

ENVIRONMENTAL DIVISION

10324 Interstate 30 | P.O. Box 2261 | Little Rock, AR 72203-2261 | Phone: 501.569.2281 | Fax: 501.569.2009

May 10, 2021

Secretary Stacy Hurst
Arkansas Historic Preservation Program
1100 North Street
Little Rock, Arkansas 72201

RE: Job Number BR7615
Mulberry River Str. & Apprs. (S)
County Road 67/Wire Road
Crawford and Franklin Counties

Dear Secretary Hurst:

Enclosed is the executed Memorandum of Agreement (MOA) regarding the treatment of the Mulberry River Bridge (ARDOT Bridge Number 13091), also known as the Silver Bridge, in Crawford and Franklin Counties for your office's records. If you have any questions or need additional information, contact Nikki Senn of my staff at (501) 569-2979.

Sincerely,

John Fleming
Division Head
Environmental Division

Enclosure
Final MOA

JF:NS:cb

MEMORANDUM OF AGREEMENT
AMONG THE
FEDERAL HIGHWAY ADMINISTRATION,
THE ARKANSAS STATE HISTORIC PRESERVATION OFFICER
CRAWFORD COUNTY, ARKANSAS,
FRANKLIN COUNTY, ARKANSAS,
CITY OF MULBERRY, ARKANSAS,
AND THE
ARKANSAS DEPARTMENT OF TRANSPORTATION,
REGARDING
ARDOT JOB NUMBER BR7615
MULBERRY RIVER STR. & APPRS. (S)
COUNTY ROAD 67/WIRE ROAD,
FRANKLIN AND CRAWFORD COUNTIES, ARKANSAS
ARDOT BRIDGE NUMBER 13091

WHEREAS, the Federal Highway Administration (FHWA) and the Arkansas Department of Transportation (ARDOT) propose constructing a new bridge across the Mulberry River along County Road 67/Wire Road in Crawford and Franklin Counties, and the old Mulberry River Bridge (Bridge), also known as the Silver Bridge, will be relocated as part of completing ARDOT Job Number BR7615; and

WHEREAS, the Bridge is a historic property listed in the National Register of Historic Places (NRHP); and

WHEREAS, the FHWA has marketed the old Bridge to state and federal agencies, Franklin and Crawford County Judges, the Cities of Mulberry, Ozark, Dyer, and Alma, area chambers of commerce, the regional metro Planning organization, other interested parties, and state and local historical societies; and

WHEREAS, the City of Mulberry (City) has agreed to accept title for the Bridge from Crawford and Franklin Counties as a pedestrian bridge for Mulberry City Park; and

WHEREAS, through the Programmatic Section 4(f) Evaluation process the FHWA determined that relocating the bridge is a feasible and prudent alternative to the demolition of the historic bridge; and

WHEREAS, the FHWA has determined that this undertaking will have an adverse effect on a historic property and in accordance with the 36 Code of Federal Regulation (CFR) Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 United States Code (USC) 306108), must address this effect; and

WHEREAS, the definitions set forth in 36 CFR § 800 are applicable throughout this Memorandum of Agreement (MOA); and

WHEREAS, the FHWA has consulted with the Quapaw Nation, United Keetoowah Band of Cherokee Indians of Oklahoma, Caddo Nation, Osage Nation, Shawnee Tribe, Cherokee Nation, Muscogee (Creek) Nation, and the Choctaw Nation of Oklahoma for which the Bridge or sites and properties in the immediate area might have religious and cultural significance; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), the FHWA through ARDOT has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii).

NOW THEREFORE, the FHWA, the State Historic Preservation Officer (SHPO), Crawford County, Franklin County, City, and the ARDOT agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of this undertaking on the Bridge.

STIPULATIONS

The FHWA, through the ARDOT, shall ensure that the following stipulations are carried out.

I. MITIGATION OF ADVERSE EFFECT TO THE HISTORIC PROPERTY

In order to mitigate the adverse effect on this historic property, the Bridge will be transferred with an appropriate "Historic Bridge Preservation Covenant" as permitted in 36 CFR § 800.6. The "Historic Bridge Preservation Covenant" is to be inserted in all instruments of conveyance and will thereafter run with the Bridge. The "Historic Bridge Preservation Covenant" is found in Appendix A. The FHWA, ARDOT, and the City will inform the SHPO of any property transactions executed under this stipulation.

II. HUMAN REMAINS

Human remains are not expected to be discovered on this undertaking; however, if they are encountered during implementation of the project, all activity in the vicinity of the discovery shall cease. The treatment of human remains shall follow the guidelines developed for the *Arkansas Burial Law* (Act 753 of 1991, as amended) and the ACHP's *Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects* published February 23, 2007. As such a permit will be obtained from the Arkansas Historic Preservation Program (AHPP) prior to exaction of any remains.

III. DURATION

This MOA will expire if its terms are not carried out within ten (10) years from the date of its execution. Prior to such time, the FHWA may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

IV. PROFESSIONAL QUALIFICATION STANDARDS

The FHWA shall ensure that all archeological investigations and other historic preservation activities pursuant to this MOA are carried out by, or under the direct supervision of, a person or persons meeting the appropriate qualifications set forth in the Secretary of the Interior's (SOI) professional qualification standards (36 CFR Part 61).

V. POST-REVIEW DISCOVERY SITUATIONS

Pursuant to 36 CFR § 800.13, if cultural material is discovered during implementation of the project, the FHWA shall ensure that all construction activities cease in the area of the discovery and the consulting parties are notified. The FHWA, in consultation with SHPO, shall determine if the discovery is eligible for inclusion in the NRHP. If so, the FHWA and the ARDOT will develop a treatment plan for the newly discovered historic properties which shall be reviewed by SHPO. Disputes arising from such review shall be resolved in accordance with Stipulation VI.

VI. DISPUTE RESOLUTION

Should the SHPO or any consulting party object with thirty (30) calendar days to any findings, proposed actions, or determinations made pursuant to this MOA, the FHWA shall consult with the objecting party to resolve

the objection. If the FHWA determines that the objection cannot be resolved, it shall request further comments from the ACHP pursuant to 36 CFR § 800.7. Any ACHP comment provided in response to such a request shall be taken in account by the FHWA in accordance with 36 CFR § 800.7 with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this MOA that are not subject to dispute shall remain unchanged.

VII. MONITORING

The consulting parties or one or more cooperating parties may monitor the undertaking and stipulations carried out pursuant to this MOA.

VIII. AMENDING THE MEMORANDUM OF AGREEMENT

Should any of the signatories to this MOA believe that the terms of this MOA are not being met or cannot be met, that party shall immediately notify the other signatories and request consultation to amend this MOA in accordance with 36 CFR § 800. The process to amend this MOA shall be conducted in a manner similar to that leading to the execution of this MOA.

IX. TERMINATING THE MEMORANDUM OF AGREEMENT

If any signatory to this MOA determines that its terms of this MOA will not or cannot be carried out, that party shall immediately consult with other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. In the event of termination, the FHWA shall comply with 36 CFR § 800.4 through 800.6 with regard to the undertaking covered by this MOA.

X. FAILURE TO CARRY OUT THE MEMORANDUM OF AGREEMENT

In the event that the FHWA does not carry out the terms of this MOA, the FHWA shall comply with 36 CFR § 800.4 through 800.6 with regard to the undertaking covered by this MOA.

XI. FULFILLMENT OF SECTION 106 RESPONSIBILITIES

Execution of this MOA and implementation of its terms evidences that the FHWA and ARDOT have taken into account the effect of the undertaking on

the historic property and has fulfilled its Section 106 responsibilities under the NHPA of 1966, as amended.

Signatory

FEDERAL HIGHWAY ADMINISTRATION



Vivien N. Hoang, P.E.
Arkansas Division Administrator

5/6/2021

Date

ARDOT Job Number BR7615
Memorandum of Agreement
Page 7 of 11

Signatory

ARKANSAS STATE HISTORIC PRESERVATION OFFICER



Secretary Stacy Hurst
Arkansas State Historic Preservation Officer

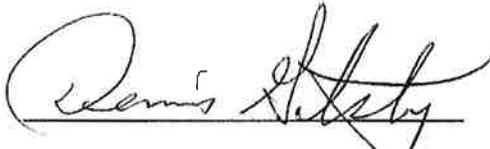
4-13-21

Date

ARDOT Job Number BR7615
Memorandum of Agreement
Page 8 of 11

Signatory

CRAWFORD COUNTY, ARKANSAS



The Honorable Dennis Gilstrap
Crawford County Judge

3.30.2021

Date

Signatory

FRANKLIN COUNTY, ARKANSAS



The Honorable Rickey Bowman
Franklin County Judge



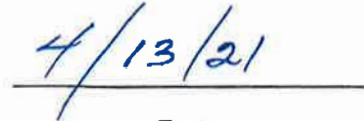
Date

Signatory

CITY OF MULBERRY, ARKANSAS



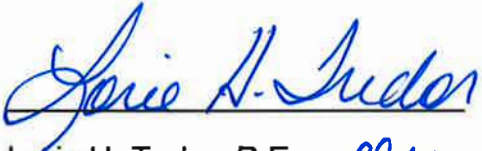
Gary D. Baxter
Mayor



Date

Signatory

ARKANSAS DEPARTMENT OF TRANSPORTATION



Lorie H. Tudor, P.E.
Director

RLH
JSW RL

5-3-2021

Date

APPENDIX A
HISTORIC BRIDGE PRESERVATION COVENANT

HISTORIC BRIDGE PRESERVATION COVENANT

The City of Mulberry, Arkansas, (Grantee), by acceptance of the bridge title from Crawford and Franklin Counties, covenants and agrees, for itself, its heirs, its successor and assigns, and for every successor in interest to the historic property herein described, or any part thereof, shall abide by each of the following covenants, each of which will be covenants running with the property.

The historic property is described as the Mulberry River Bridge (ARDOT Bridge Number 13091 or Bridge), which consists of a Pratt through truss. The Bridge is located in the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 24, Township 10N, Range 29W on the Mountainburg SE (7.5) minute USGS topographic quadrangle where County Road 67/Wire Road crosses the Mulberry River. The Lakeside Bridge and Steel Company of Milwaukee, Wisconsin, erected two spans of this bridge in 1929 to replace the spans damaged in the Great Flood of 1927. An unknown builder likely constructed the western span in 1912.

The Grantee covenants and agrees that:

1. The Grantee has identified a location in which the Bridge will be reassembled following its dismantling in its current location;
2. The Bridge will be preserved and maintained in accordance with the recommended approaches of the Secretary of the Interior's (SOI) Standards for the Treatment of Historic Properties;
3. No physical or structural changes or changes of color or surfacing, aside from those arising from the movement of the bridge to its new location, will be made to the Bridge without first notifying, in writing, the Federal Highway Administration (FHWA), the Arkansas Department of Transportation (ARDOT), and consulting the Arkansas State Historic Preservation Officer (SHPO) for written approval;
4. The Bridge will be opened to public access once relocation and restoration are completed. Should removal or restriction of public access become necessary, the ARDOT will be notified in writing and the SHPO consulted as to the disposition of this historic property;
5. Normally, the FHWA through the ARDOT can reimburse costs associated with preservation. However, the cost reimbursement

funds allocated to this bridge will be exhausted when the bridge is dismantled and relocated;

6. If Grantee is unable to fulfill its preservation responsibilities to the Bridge, which would dictate the abandonment or removal of the historic property, the Grantee must notify the FHWA, the ARDOT, and the SHPO in writing and produce any documents required by the SHPO for mitigation of the adverse effect from abandonment or removal of the historic property;
7. Any proposed changes or modification of the historic property shall be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and must be reviewed and approved by the SHPO;
8. An authorized representative of the ARDOT or SHPO shall be permitted at all reasonable times to examine the Bridge in order to ascertain if the above conditions are being observed. Prior to examination the representative shall furnish properly written notification of their intent to inspect;
9. The failure of the FHWA, the ARDOT, or the SHPO to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other remedy or the use of such right or remedy at any other time; and
10. These covenants shall be a binding servitude upon the real property that includes the Bridge, which shall be deemed to run with the property and shall be incorporated into any deed or other legal instrument by which the Grantee divests itself of the property.

In the event of violation of the above covenants, the FHWA, ARDOT, or SHPO may institute an injunction or suit to enjoin such violation or for damages by reason of any breach thereof.

These covenants shall be binding on the Grantee hereto, their successors, and assigns in perpetuity; however, the SHPO may, for good cause, and with the concurrence of FHWA, modify or cancel any or all of the foregoing restrictions upon written application of the Grantee, its successors or assigns.

The acceptance of the delivery of the Historic Bridge Preservation Covenant shall constitute conclusive evidence of the agreement of the Grantee to be bound by the obligations herein set forth.

**ARDOT ENVIRONMENTAL VERIFICATION CHECKLIST
FOR CONSIDERATION OF POTENTIAL IMPACTS**

ARDOT Job BR7615 FAP STPB-0076(297)

Job Title Mulberry River Str. & Apprs. (S)

Environmental Resource	None	Minimal	Major	Comments-required for each item
Air Quality	X			No MSAT; no impacts
Cultural Resources	X			SHPO clearance and MOA attached
Economic	X			No adverse impacts
Endangered Species		X		See USFWS coordination
Environmental Justice/Title VI	X			EJ populations not identified in area
Fish and Wildlife		X		Temporary impacts during construction
Floodplains	X			SFHA A; Floodplain SP included in contract
Forest Service Property	X			None in project area
Hazardous Materials/Landfills	X			None identified in project area
Land Use		X		Approx.3.8 acres new ROW acquired
Migratory Birds	X			Migratory Bird SP will be included
Navigation/Coast Guard	X			None in project area
Noise Levels	X	X		Noise analysis not required
Prime Farmland		X		Approx. 1.7 acres Prime Farmland converted
Protected Waters		X		* Mulberry River: ERW, NSW
Public Recreation Lands	X			None in project area
Public Water Supply/WHPA	X			None in project area
Relocates	X			No relocations necessary
Section 4(f)/6(f)	X			No Section 4f Evaluation required; No 6f
Social	X			No adverse impacts
Underground Storage Tanks	X			None identified in project area
Visual	X			No adverse impacts predicted
Streams		X		0.006 acre of impacts
Water Quality		X		Temporary during construction
Wetlands	X			None in project area
Wildlife Refuges	X			None in project area

Section 401 Water Quality Certification Required? Yes
 Short-term Activity Authorization Required? Yes
 Section 404 Permit Required? Yes Type NW14

Remarks: _

* Mulberry is an Extraordinary Resource Water and Natural & Scenic Water. WPC SP, Veg. Buffer SP, Individual 401 certification required

Signature of Evaluator Mary Pearson Date 9/21/22