

and in some cases, specified third parties. These assurances will be extended in accordance with the Service's No Surprises rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

Because of the similarities between the purposes of regional HCPs and designation of critical habitat, and in light of the intensive investigation and analysis undertaken in conjunction with regional HCP planning processes, regional HCPs currently under development will identify, protect and provide appropriate adaptive management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Given this coordination, we anticipate that the analysis of these HCPs and proposed permits that will be conducted under section 7 of the Act will show that activities covered under such permits will not result in the destruction or adverse modification of designated critical habitat within the boundaries of the plans when the covered activities are carried out in accordance with the provisions of the HCPs.

For the foregoing reasons, we find that the continued development of the pending HCPs is beneficial. Furthermore, the Service has developed positive conservation relationships with the jurisdictions involved in the pending HCPs. The maintenance of these relationships serves to ensure the eventual completion of these HCPs. The pending HCPs, although at different stages of development, represent substantial biological analysis as well as substantial investment of public and private resources for the benefit of conservation. Exclusion of the lands within the pending HCPs benefits the species by providing an incentive to finalize the HCPs.

Inclusion as critical habitat of the lands in the pending HCPs provides no benefit greater than that which would result from completion of the HCPs. HCPs provide greater actual conservation than the mere designation of critical habitat. Thus, the benefits of excluding these areas from designation as critical habitat outweigh the benefits of including them. The exclusion will not cause the extinction of the species. If any pending HCP is not finalized as currently proposed, we will re-evaluate the need for critical habitat designation on lands not included in finalized HCPs.

Following is our preliminary analysis of the benefits of including lands within approved HCPs versus excluding such lands from critical habitat designation.

(1) Special Management Considerations and Section 3(5)(a)

On November 19, 2002, GreyStone Environmental Consults Inc. finalized an HCP for the Preble's on the Lefever Property and was issued a section 10 Incidental Take Permit by the Service. This HCP allows for the construction of a single-family residence in Black Forest, El Paso County, Colorado. Construction will directly impact 0.252 ha (0.561 ac) of potential Preble's habitat, including 0.087 ha (0.215 ac) of temporary disturbance and 0.140 ha (0.346 ac) of permanent disturbance. The applicant will preserve and enhance a 1.828 ha (4.515-ac) conservation easement of similar foraging habitat for the mouse in the remaining acres of property. This area has been deeded to El Paso County, Colorado, and shall be managed according to specific requirements laid out in the HCP. The following activities are expressly prohibited by the agreement on the property easement: construction or reconstruction of any building or other structure or improvement on portions of the property; any division or subdivision of the title to the property; commercial timber harvesting; mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance; paving or otherwise covering with concrete, asphalt, or any other paving material; and the dumping or uncontained accumulation of any trash, refuse or debris on the property. As further compensation for the impacted habitat, 0.36 ha (0.89 ac) of the 1.828 ha (4.515 ac) shall be planted with 100 shrubs to serve as Preble's habitat. This enhancement will follow a strict planting and care plan for 2 years to ensure success. A monitoring program will be in effect for three full growing seasons or until success is achieved. At the end of each growing season, a brief letter report will be submitted to the Service describing the status of any remedial work performed. The shrub planting will be considered successful when 67 percent of shrubs are established and able to survive a full growing season without supplemental irrigation.

On July 23, 2002, Lee Dahle finalized an HCP for Preble's on the Dahle Property and was issued a section 10 Incidental Take Permit by the Service on July 29, 2002. This HCP allows for the construction of a single-family residence on a 0.26 ha (0.65 ac) lot at 17 El Dorado Lane in the Thunderbird Estates in Colorado Springs, El Paso County, Colorado. Construction will directly impact 0.06 ha (0.15 ac) of

upland Preble's habitat, including less than 0.01 ha (0.01 ac) of temporary disturbance and 0.034 ha (0.085 ac) of permanent disturbance. The applicant will preserve and enhance the remaining 0.2 ha (0.5 ac) of the property in a native and unmowed condition as a corridor for the mouse. As further compensation for the impacted habitat, the preserved 0.2 ha (0.5 ac) will be enhanced through weed control and willow planting. The enhancement area will be monitored for three full growing seasons or until success is achieved. At the end of each growing season, a brief letter report will be submitted to the Service describing the status of any mitigation work performed. The shrub planting will be considered successful when 67 percent of shrubs are established and able to survive a full growing season without supplemental irrigation. The weed control will be considered successful when a 50 percent reduction of individual weed plants is achieved.

On April 16, 2003, Denver Water finalized an HCP for the Preble's and was issued a section 10 Incidental Take Permit by the Service on May 1, 2003. This HCP covers the water facilities and infrastructure owned and operated by Denver Water including: the Foothills, Marston and Moffat treatment plants; 17 pump stations; 29 treated water storage reservoirs; and 3,968 km (2,464 mi) of pipe. The HCP promotes avoidance and minimization, and where practicable, implementation of applicable best management practices that avoid, minimize, and eliminate impacts to occupied and potential habitat. Where impacts occur, Denver Water will conduct mitigation proposed by the HCP. This HCP provides long-term assurances that Denver Water's covered activities are permitted and in compliance with the Act and provides the Service with a tool to minimize and mitigate take on occupied and potential habitat. To accomplish these goals, the plan requires the following special management and protection:

(a) Before conducting a covered activity (principally operations and maintenance activities) on occupied and potential habitat, Denver Water will determine whether avoidance and minimization efforts are applicable, practicable, and can be used to avoid, reduce, or eliminate take. Generally, the use of best management practices will be the most practicable avoidance or minimization tool. Appendix 5 of the HCP lists best management practices that may be applicable to Denver Water's routine operation and maintenance activities and projects. In some cases, the use of best management