

compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that exclusion encourages the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions that the Service would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and set the stage for more effective conservation actions in the future.

Specifically, for the lands covered by the Denver Water HCP for the Preble's, in a letter dated January 21, 2003, Jennifer McCurdy, with Denver Water, noted the following: "Denver Water believes that designation of Critical Habitat on Denver Water properties has negligible, if any, benefit to the recovery of the Preble's while the benefits resulting from the exclusion of Critical Habitat on those properties are many. There is little benefit to designating Critical Habitat on Denver Water properties because: (a) Denver Water will have an HCP in place covering the same properties proposed for designation; (b) Denver Water is a private landowner with primarily, if not exclusively, private (non-Federal) actions in these Critical Habitat areas; (c) No portion of designated habitat encompasses an entire unit of proposed habitat, but rather is a small fraction of a unit; (d) Designation of Critical Habitat on private property will discourage private landowners from participating in an HCP, especially when Critical Habitat can be designated on properties already under an HCP or an imminent HCP; and (e) In effect, Critical Habitat will not be treated differently for this species than what is required under Section 9 of the Act. The benefits of exclusion on Denver Water properties, however, are that: (a) Denver Water's HCP will provide greater assurances and conservation benefits to the Preble's than Critical Habitat designation because the HCP will assure the long-term protection (30-year) and management of the species and its habitat, and funding, through the standards in the HCP Handbook, 5-Point Policy, and No Surprises regulations; (b) Exclusion of properties within Denver Water's HCP reduces the requirements for additional regulatory review. Additional review would likely result in additional permitting costs (delays, administrative, consulting and mitigation) for Denver Water. The Service and other federal agencies would also be subject to additional

administrative and technical costs resulting from an additional, redundant review process. If only Section 9 or an HCP are required, a greater amount of time and funding could possibly be spent on further conservation measures; (c) Exclusion of Critical Habitat and conservation management based on the HCP will allow more flexibility to a municipal water supplier with private lands and privately owned facilities to operate as it needs in order to meet its mission of supplying high-quality water to its customers; (d) Denver Water's HCP will provide other conservation benefits beyond habitat conservation such as collection and development of additional biological information to assist with conservation and recovery efforts, development of innovative programs, and education regarding the importance of species survival and habitat protection; and (e) The Denver Water HCP will provide an integrated and comprehensive approach to species conservation rather than the "piecemeal" approaches of multiple Section 7 consultations that only address activities with a federal nexus. Exclusion of Denver Water properties from the Critical Habitat listing will not result in the extinction of the Preble's, nor would it preclude conservation or recovery of the species."

We have weighed the small benefit, if any, of including the lands in the HCP in critical habitat against the benefits of exclusion and determined that the benefit of excluding the land covered by the Denver Water HCP, the Lefever Property HCP, and the Dahle Property HCP from designation as Preble critical habitat outweighs the benefits of including the areas. Thus, as required by section 4(b)(2) of the Act, we have excluded them from the critical habitat designation.

In the event that future HCPs covering the Preble's are developed within the boundaries of designated critical habitat, we will provide technical assistance and work closely with the applicants to identify lands essential for the Preble's, ensure that the HCPs provide for protection and management of the habitat areas essential to the Preble's by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive analysis and data collection regarding the use of particular habitat areas by the Preble's and a more detailed analysis of the importance of such lands.

## Relationship With Department of Defense Lands

### *The Academy and F.E. Warren*

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

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. The Service consults with the military on the development and implementation of INRMPs for installations with listed species. Bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they already provide special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (a) A current INRMP must be complete and provide a conservation benefit to the species; (b) the plan must provide assurances that the conservation management strategies will be implemented; and (c) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) and consequently not be proposed as critical habitat for the covered species.

The Academy in El Paso County, CO has in place an INRMP, a 1999 "Conservation and Management Plan for the Preble's Meadow Jumping Mouse at the U.S. Air Force Academy," and a 2000 programmatic section 7 consultation addressing certain activities at the Academy that may affect the Preble's. The conservation and management plan provides guidance for Air Force management decisions over the 2000 to 2005, five-year period. While it was based upon the most