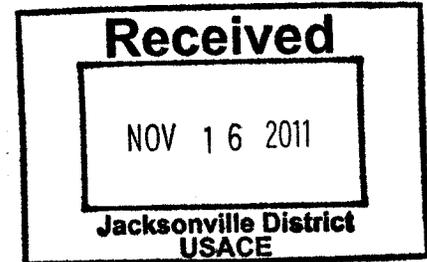


November 15, 2011

Mr. Robert B. Barron
Project Manager
Regulatory Division
United States Army Corps of Engineers
P.O. Box 4970
Jacksonville, FL 32232-0019



Re: USFWS Petition for Listing - Coqui' llanero
Via Verde Pipeline Project, Puerto Rico
SAJ 2010-02881 (IP-EWG)

Dear Mr. Barron:

The following supplemental information is provided on behalf of the Puerto Rico Electric Power Authority (PREPA) to address the recent United States Fish & Wildlife Service (USFWS) 12-month finding on the petition to list the coqui' llanero (*Eleutherodactylus juanariveroi*), an endemic Puerto Rican tree frog, as endangered under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat for the species. As you are aware, PREPA and its consulting team of environmental scientists have provided, and continue to provide, the USFWS with information regarding this issue.

PREPA previously enlisted the services of Ms. Sondra I. Vega-Castillo, MS, Wildlife Biologist to conduct field studies to determine the presence and absence of suitable habitat and individual species of the coqui' llanero along the route of the Project. Ms. Vega-Castillo was accompanied by USFWS biologists in January of 2011 to evaluate areas within and adjacent to the Via Verde Pipeline Project right-of-way. Details and information garnered from Ms. Vega-Castillo's work were provided by PREPA to the U.S. Army Corps of Engineers (USACE), and were included by the USACE in the Biological Assessment it prepared for the Project and provided to the USFWS. That information also was utilized by the USFWS in issuing its finding on the petition for the coqui' llanero.

As you know, the USACE determined in the Biological Assessment the Project may affect, but would not likely adversely affect, the coqui' llanero. On July 15, 2011, the USFWS concurred with that determination.

As part of the detailed investigations referenced above, PREPA provided the following information to the USFWS and the USACE with respect to the presence and/or absence of this species within the Via Verde project right-of-way:

- (1) The historical and current status, range, distribution and estimates of population size of this species, including the locations of any additional populations noted adjacent to the project right-of-way.

(2) The biological or ecological requirements of the species within these areas, and any ongoing or proposed conservation measures which will contribute to the continued existence of the species and its habitat in this area.

(3) Relevant data concerning any biological, commercial trade, or other anthropogenic threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Consultations on current or planned pipeline activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) Additional information regarding the threats to the species as considered under the five listing factors to be considered in making a determination (Section 4 (b)(1)(A) of the Act), which include:

- (a) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) overutilization for commercial, recreational, scientific, or educational purposes;
- (c) disease or predation;
- (d) the inadequacy of existing regulatory mechanisms; and
- (e) other natural or manmade factors affecting its continued existence.

(6) The reasons why certain developed or disturbed areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 et seq.), including the possible risks or benefits of designating critical habitat, including specific information on:

- (a) the amount and distribution of habitat for coqui' llanero within the limits of the project right of way as designed;
- (b) evaluations of what areas, that were occupied at the time of listing (or are currently occupied) and that contain the physical and biological features essential to the conservation of this species, should be included in a critical habitat designation and why;
- (c) special management considerations or protections that will be provided for the essential features in critical habitat areas, and
- (d) additional areas currently not occupied (at the time of this listing) which may be essential for the conservation of this species.

(7) Considerations to improve or modify the current USFWS approach to designating critical habitat in any way to provide for greater public participation and understanding, as well as to better accommodate public concerns and future development needs.

(8) Information on whether the benefits of an exclusion of any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act.

The data, maps, and information were provided as baseline information for this species' assessment and were included with the final Biological Assessment for the Via Verde Pipeline. This information constitutes the best scientific and commercial data available, and in conjunction with the required regulatory agency consultation process was used by

the USACE in reaching its determination, as well as by the USFWS in issuing its concurrence.

In the case of coquí llanero, the pipeline will traverse wetland areas in the municipality of Toa Baja that have been identified and field surveyed as potential habitat for the species. The coquí llanero is characterized by the smallest geographical distribution of all frogs in Puerto Rico. Prior to the Vega/USFWS 2011 studies, the only known populations were located in the Sabana Seca, Ingenio Ward within the Sabana Seca U.S. Naval Security Group Activity property and the Caribbean Primate Research Center in the Municipality of Toa Baja. The species has been considered a habitat specialist, limited to 180 hectares of seasonally flooded palustrine wetland at 17 m (55.8 ft.) above sea level on limestone formation (Ríos-López and Thomas 2007).

The section of the Via Verde Project that runs from road PR-867 and ends at road PR-165 to the north is mostly comprised by areas of improved pastures, interrupted by canals and lagoons populated by *Panicum aquaticum*, *Cyperus giganteus*, *Eichhornia crassipes*, *Alternanthera philoxeroides* and *Pistia stratiotes*, among others. This area was not considered optimal habitat for this species. Closer to the coast, in addition to areas covered by grass, there are groups of trees and shrubs that include almond, coconut palms and mangroves, among others. During visits to this portion of the section, the presence of at least six individuals of the coquí llanero were detected (Ref. Figure 6, Vega-Castillo 2011). The species was heard in the grassy vegetation along the sides of the water channel. This site represents the first documented location for the coquí llanero outside of the habitat originally described by the Department of Natural and Environmental Resources (DNER) for the species. In terms of the coquí llanero, the species was detected in December and January along the side of one of the channels that runs through the study area in the Municipality of Toa Baja.

At this time, after extensive critical review by USFWS and the DNER it is our understanding one area of critical habitat has been designated for this species, the Sabana Seca Unit. The Sabana Seca Unit consists of approximately 615 ac (249 ha) located south of State Road PR-867, west-southwest of Ramon Rios Roman Avenue, east of Jose´ Julian Acosta Road, and north of the limestone hills located north of Highway PR-22 in the Municipality of Toa Baja, Puerto Rico. The area is designated as a palustrine emergent wetland (PEM1H6) on the USFWS Wetland Types database. The designated right-of-way for the Via Verde pipeline is approximately 2 kilometers (1.24 miles) to the north and west of this area. At this point most of this section of pipeline will be directionally drilled below an estuarine emergent wetland (E2EM1M). The pipeline right-of-way in this area does not constitute critical habitat for the coquí llanero.

The following information was excerpted from the DEPARTMENT OF THE INTERIOR, Fish and Wildlife Service 50 CFR Part 17 [Docket No. FWS-R4-ES-2009-0022] RIN 1018-AX68 Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding, Proposed Listing of Coquí Llanero as Endangered, and Designation of Critical Habitat for Coquí Llanero. AGENCY: Fish and Wildlife Service, Interior. ACTION: Proposed rule; 12-month; as published on page 63420 of the Federal Register / Vol. 76, No. 197 / Wednesday, October 12, 2011 / Proposed Rules.

Vega-Castillo (2011) conducted diurnal and nocturnal surveys in wetland areas and channels located between PR Road-867 and PR Road-165 to

*the north of where coqui llanero is currently found while evaluating the proposed alignment for a natural gas pipeline. These surveys were conducted during January 2011, using recorded male calling (Vega-Castillo 2011, pp. 9–12). During this period, Vega-Castillo (2011) detected at least 6 individuals of coqui llanero vocalizing at the edge of a vegetated drainage channel that is a tributary of the Cocal River. The location where these individuals were reported is located about 1.7 mi (2.7 km) northwest from the area where coqui llanero are known to currently inhabit. This area is mainly dominated by pasture (Vega-Castillo 2011, p. 12). In March 2011, Service biologists conducted several site visits to the area to confirm the report. In addition, the Service installed a recorder for a 24- hour period in March 2011, to detect individuals vocalizing in the area. **However, the Service did not detect the species in this area. Based on the Service's observations, the area is highly degraded, is dominated by lands converted to pasture and burned, and is not considered in the total habitat occupied by coqui llanero. (emphasis is ours)***

Based upon the results obtained from recent joint field investigations conducted by Ms. Vega-Castillo and the USFWS (which constitute the best scientific and commercial data available and have been incorporated into the petition finding issued by the USFWS), PREPA continues to believe that construction of the Project would affect, but is not likely to adversely affect, the coqui llanero and its habitat – especially after consideration of the preconstruction surveys, concurrent construction surveys, and conservation measures that are included in the Biological Assessment and which PREPA has agreed to implement in connection with the Via Verde Project.

In this regard, PREPA has agreed to implement upland Best Management Practices (BMP's), Storm water Pollution Prevention Plan (SWPPP's), and Compensatory Mitigation Plan (CMP) measures. Specific measures identified for the coqui llanero would include:

- proper grading, land stabilization, and restoration as detailed in the SWPPP;
- wetland and water body construction control and mitigation measures as detailed in the Turbidity and Erosion Control Plan;
- land acquisition, wetland enhancement, and preservation measures as detailed in the CMP

In addition, PREPA has agreed to implement the Wildlife Construction Survey and Project Conservation Measures outlined in the USFWS Biological Opinion for the Via Verde Project, dated August 23, 2011. The coqui llanero is currently a Commonwealth listed species and a candidate for listing at the federal level. As a result of the lack of joint or unified species regulation, coordination of conservation measures has been a cooperative process with the Puerto Rico DNER and the USFWS. Draft letters summarizing the detection and avoidance protocols developed were delivered to both agencies in April 2011. The eight (8) proposed methods presented below represent a summary of those Project Conservation Measures prepared by the USFWS and outlined in the USFWS Biological Opinion for the project. The specific conservation measures to

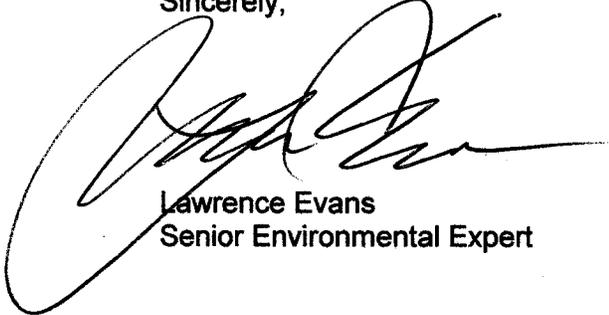
be implemented for the coqui llanero will involve conducting surveys for the species prior to any construction activities (Pre-construction Surveys) and ongoing daily construction surveys (Concurrent Construction Monitoring Surveys) in each area considered to have potential habitat for the species. A local qualified biologist will be on staff to conduct these surveys. During these surveys, detected individuals of the coqui llanero will be relocated into a nearby undisturbed suitable habitat (subject to coordination and successful compliance with Conditions 1 and 2 below).

1. Conservation alternatives developed for this species shall be closely coordinated with species experts to ensure the protection of the species.
2. Any proposed efforts to collect and re-locate individuals should be carefully evaluated with species experts and alternatives shall be developed to avoid possible effects to the species.
3. During the initial establishment and clearing of the construction ROW, two biologists will conduct daily sampling to detect the species in the construction area before work begins.
4. These monitoring activities will be carried out daily, concurrent with the monitoring required for the Puerto Rican boa.
5. All monitoring events will be incorporated into and will be carried out in coordination with the work plan of the contractor; daily changes to these work plans shall be considered in planning the work.
6. Monitoring events will be carried out between 5:00a.m. and 7:30a.m. on days when major equipment will be operated within the construction ROW.
7. When a species is detected, established capture and relocation protocols (similar to those identified for the boa) will be implemented. Data regarding all species identified within the ROW, captured and/or relocated, will be incorporated into the daily environmental monitoring logs.
8. All collections, relocations and data transmissions will be coordinated with the appropriate local, state, and federal regulatory agencies.

The potential affect of the Project on the coqui llanero and its habitat was evaluated by the USACE in the Biological Assessment, and the USFWS concurred with the USACE's determination the Project would affect, but is not likely to adversely affect, the coqui llanero and its habitat within the Project area. The information included in the Biological Assessment, which was evaluated by both the USACE and USFWS, still constitutes the best scientific and commercial data available with respect to this species, and the 12-month petition finding issued by the USFWS does not present any new or different information.

As such, and in light of the proposed preconstruction surveys, concurrent construction surveys, and conservation measures to be implemented, PREPA believes no additional consultation under the Endangered Species Act is required for the coqui llanero and its habitat. However, because a recent notice was transmitted to the USACE which alleges additional actions are required on this issue, PREPA would appreciate if the USACE confirms that no additional actions or consultation are required.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lawrence Evans', written over a large, stylized circular flourish.

Lawrence Evans
Senior Environmental Expert

References Cited

Ríos-López, N. y R. Thomas. 2007. A new species of palustrine *Eleutherodactylus* (Anura:Leptodactylidae) from Puerto Rico. *Zootaxa*. 1512:51-64.

Vega-Castillo, S. 2011. Búsqueda del Sapo Concho de Puerto Rico (*Peltophryne lemur*) y el Coqui Llanero (*Eleutherodactylus juanariveroi*) en las áreas propuestas para la construcción del Proyecto Via Verde. Prepared for Asesores Ambientales y Educativos, Inc. 29 pp.