



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



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PUBLIC SERVICE COMMISSION

North Dakota Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505

Dear Commissioners:

The U.S. Fish and Wildlife Service (Service) has reviewed the January 22, 2009, Notice Extending Opportunity for Hearing for Case No. PU-08-923, regarding the application filed by Saddle Butte Pipeline LLC to construct and own a natural gas and crude oil pipeline system in McKenzie and Dunn Counties, North Dakota. The proposed system and associated facilities are located primarily on the Fort Berthold Reservation.

We offer the following comments to assist with the project planning process in accordance with the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) (MBTA), the Endangered Species Act (16 U.S.C. 1531 et seq.) (ESA), and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). If the Bureau of Indian Affairs (BIA) elects to conduct a review pursuant to NEPA and/or the ESA, we will provide further comments within those processes.

If an action that may affect a federally-listed threatened or endangered species is funded, permitted, or licensed by a Federal agency (in this case, the BIA), then the Federal agency may designate a non-Federal representative to conduct informal consultation with the Service under Section 7 of the Endangered Species Act (ESA). The funding, permitting, or licensing Federal agency is responsible to ensure that its' actions comply with the ESA and other relevant wildlife protection laws, including obtaining concurrence from the Service for any action that may affect a threatened or endangered species or result in the destruction or adverse modification of designated critical habitat. The Service believes that Saddle Butte Pipeline LLC should fully coordinate this project with the BIA and complete the federal review process pursuant to the National Environmental Policy Act (NEPA) prior to the Commission rendering a decision. The Service recommends that Saddle Butte Pipeline LLC and its consultants coordinate with BIA on this project and any other project under the purview of the BIA. A copy of this correspondence has also been sent to Mr. Paul Hofmann, BIA Division Chief in Aberdeen, South Dakota.

## **High Value Habitat Avoidance**

Construction activities should be conducted in a manner that will avoid/minimize important wildlife habitat in the project area. The following recommendations are intended to reduce construction related impacts and we request that the Commission include them as permit conditions.

- Schedule construction for late summer or fall/early winter so as not to disrupt migratory birds or other wildlife during the breeding season (February 1 to July 15). If work is proposed to take place during the breeding season or at any other time which may result in the take of migratory birds or active nests, the Service recommends that the project proponent arrange to have a qualified biologist conduct a field survey of the affected habitats to determine the presence of nesting migratory birds. If nesting migratory birds are found, we request that the project proponent be required to develop appropriate measures in accordance with the MBTA to protect the birds until the young have fledged. The Service further recommends that field surveys for nesting birds, along with information regarding the qualification of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site, be thoroughly documented and that such documentation be shared with the Service and maintained on file by the project proponent at least until such time as construction on the proposed project has been completed.
- Make no stream channel alterations or changes in drainage patterns.
- Install and maintain appropriate erosion control measures to reduce sedimentation and water quality degradation of wetlands and streams near the project area.
- Reseed disturbed areas with native plant species immediately after construction to reduce erosion.

According to the Service's National Wetland Inventory maps, there are wetlands in the proposed project area. Wetlands are important for water quality as well as for a variety of wildlife species. The Service suggests that Saddle Butte Pipeline LLC include a detailed plan to avoid/minimize impacts to the wetland if possible. If construction will result in the unavoidable loss of wetland resources, a mitigation plan to offset resource losses should be developed.

## **Threatened and Endangered Species**

A list of federally endangered and threatened species that may be present within the proposed project's area of influence is enclosed. This list fulfills requirements of the Service under Section 7 of the Endangered Species Act. This list remains valid for 90-days.

If a Federal agency authorizes, funds, or carries out a proposed action, the responsible Federal agency, or its delegated agent, is required to evaluate whether the action "may

affect” listed species. If the Federal action agency or its delegated agent determines the action may likely adversely affect listed species, then the responsible Federal agency will need to consult with this office, or work with this office to remove the likely adverse effects before proceeding. The Federal action agency’s determination of effects to listed species and concurrence by the Service should be completed prior to making any irretrievable or irreversible commitments with regard to this project. If the evaluation by the Federal action agency shows a “no effect” determination to listed species, further consultation is not necessary.

Piping plovers have been documented to nest on the shoreline of Lake Sakakawea. One of the specific actions listed in the Piping Plover Recovery Plan (USFWS 1988) is to “protect, enhance, and increase piping plover populations during the breeding season.” The negative effect of human disturbance is noted in many research publications. Reducing or eliminating disturbance to piping plovers is a priority for the Service.

According to the map, portions of the proposed pipeline appear to be in close proximity to designated critical habitat for piping plovers, which extends the entire length of Lake Sakakawea. Piping plovers are protected on private land, as well as land in Federal ownership. Piping plovers nest along the shoreline of Lake Sakakawea, which varies according to water levels. The soils along the shoreline of the reservoir may be soft and tracks are easily left behind. Piping plover chicks have been documented to be trapped and/or drowned in depressions as shallow as a few inches. Compaction of soil in dry or frozen conditions has the potential to impact piping plovers for many years after the activity. The ESA protects the birds from harassment and harm, as well as direct mortality. The ESA also protects their designated critical habitat. If construction or operational activities do not involve disturbance of the shoreline along the reservoir, the Service believes that a “not likely to adversely affect” determination by the Federal action agency or its designated agent for piping plover and their designated critical habitat would be justified. If Saddle Butte Pipeline LLC does not avoid the shoreline along the reservoir as recommended, then the Service believes that formal consultation under section 7 of the ESA may be necessary. In either case, the action agency or the designated Federal agent will need to make a determination of effects on listed species, and should inform the Service of their decision and request concurrence or formal consultation accordingly.

The Aransas Wood Buffalo Population (AWBP) of endangered whooping cranes is the only self-sustaining migratory population of whooping cranes remaining in the wild. These birds breed in the wetlands of Wood Buffalo National Park in Alberta and the Northwest Territories of northern Canada, and overwinter on the Texas coast. Whooping cranes in the AWBP annually migrate through North Dakota during their spring and fall migrations. They make numerous stops along their migration route to feed and roost.

The Dakota skipper has been documented on native prairie on the Fort Berthold Reservation in Dunn and McKenzie Counties. In 1995, the Dakota skipper was listed as a candidate species under the ESA. No legal requirement exists to protect candidate

species; however, it is within the spirit of the ESA to consider these species as having significant value and worth protecting.

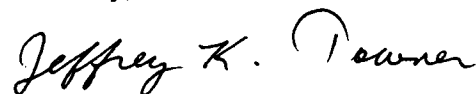
The Dakota skipper is a small to medium-sized hesperiine butterfly associated with high quality prairie. In upland dry prairie, west of the Missouri River, Dakota skippers are generally associated with bluestem (*Andropogon* spp.) and needle-grasses (*Stipa* spp.), as well as pale purple and upright coneflowers (*Echinacea* spp.) and blanketflower (*Gaillardia* sp) and are often on ridges and hillsides. Because of the difficulty of surveying for Dakota skippers and a short survey window, we recommend that the project avoid any impacts to potential Dakota skipper habitat. If Dakota skippers may be present near the proposed project, the Federal action agency or designated agent should notify the Service and advise us on how they intend to avoid impacts to skipper habitat.

### **Grassland Restoration**

A significant portion of the project area is comprised of native grassland and hardwood draws along many drainages. Native grasslands and hardwood draws provide important habitat for both resident wildlife, including sharp-tailed grouse, mule deer and wild turkeys, and migratory birds, such as mourning doves and a wide variety of songbirds. After the pipeline and associated facilities have been constructed, the Service recommends that these areas within the temporary construction right-of-way be returned to native prairie and hardwood draws in step with the Commission's reclamation requirements for coal mining activities. The Service recommends planting a diverse mix of native species to reclaim the grassland areas. Recent research indicates that a diverse native species mix, including numerous forb species, is not only ecologically beneficial, but is also more weed resistant (Blumenthal 2003, Carpinelli 2001, Pokorny 2002, Sheley and Half 2006, Tilman 1996, Tilman et al. 1996). A diverse planting of native grasses and forbs allows for less intensive management and chemical use. The more species included in a mixture, the higher the probability of providing competition to resist invasion by non-native plants.

Thank you for the opportunity to comment on the Notice of Filings and Notice of Rescheduled Hearings. The Service recommends that the measures outlined in this letter be included as permit conditions in any permit issued by the Commission. If you require further information, please contact Heidi Kuska of my staff, or contact me directly, at (701) 250-4481, or at the letterhead address.

Sincerely,



Jeffrey K. Towner  
Field Supervisor  
North Dakota Field Office

Enclosure

cc: Chief, Div. of Envir. Safety & Cultural Res, BIA, Aberdeen  
(Attn: Paul Hofmann)

FEDERAL THREATENED, ENDANGERED, AND CANDIDATE SPECIES  
AND DESIGNATED CRITICAL HABITAT FOUND IN  
DUNN & MCKENZIE COUNTIES, NORTH DAKOTA  
February 2009

## ENDANGERED SPECIES

### Birds

Interior least tern (*Sterna antillarum*): Nests along midstream sandbars of the Missouri and Yellowstone Rivers.

Whooping crane (*Grus Americana*): Migrates through west and central counties during spring and fall. Prefers to roost on wetlands and stockdams with good visibility. Young adult summered in North Dakota in 1989, 1990, and 1993. Total population 140-150 birds.

### Fish

Pallid sturgeon (*Scaphirhynchus albus*): Known only from the Missouri and Yellowstone Rivers. No reproduction has been documented in 15 years.

### Mammals

Black-footed ferret (*Mustela nigripes*): Exclusively associated with prairie dog towns. No records of occurrence in recent years, although there is potential for reintroduction in the future.

Gray wolf (*Canis lupus*): Occasional visitor in North Dakota. Most frequently observed in the Turtle Mountains area.

## THREATENED SPECIES

### Birds

Piping plover (*Charadrius melodus*): Nests on midstream sandbars of the Missouri and Yellowstone Rivers and along shorelines of saline wetlands. More nest in North Dakota than any other state.

## **CANDIDATE SPECIES**

### Invertebrates

Dakota skipper (Hesperia dacotae): Found in native prairie containing a high diversity of wildflowers and grasses. Habitat includes two prairie types: 1) low (wet) prairie dominated by bluestem grasses, wood lily, harebell, and smooth camas; 2) upland (dry) prairie on ridges and hillsides dominated by bluestem grasses, needlegrass, pale purple and upright coneflowers and blanketflower.

## **DESIGNATED CRITICAL HABITAT**

### Birds

Piping Plover - Lake Sakakawea - Critical habitat includes sparsely vegetated shoreline beaches, peninsulas, islands composed of sand, gravel, or shale, and their interface with the water bodies.