



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



MAR 8 2011

Mr. Dan Flo
Environmental Scientist
Barr Engineering Co.
4700 West 77th Street, Suite 200
Minneapolis, Minnesota 55435

Re: Rangeland Energy-Colt Connector Pipeline
Project

Dear Mr. Flo:

The U.S. Fish and Wildlife Service (Service) has reviewed the proposed Rangeland Energy-Colt Connector Pipeline Project, described in a letter dated December 20, 2010. Rangeland Energy, LCC (Rangeland Energy) is proposing to construct an 8-inch-diameter pipeline 20-miles long that will generally parallel the existing Enbridge pipeline between the town of Epping and Beaver Lodge/Ramberg Station. The proposed pipeline will transport crude oil from near Epping to a delivery facility to be located approximately eight miles south of Tioga. We offer the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250).

Below are recommendations to assist in complying with each of these authorities. Your plans should integrate these recommendations to maximize compliance. Recommendations addressing the trust resources under Service authorities are tailored to address protective measures for a variety of species.

Threatened, and Endangered Species

Section 10(a)(1)(B) of the ESA allows non-Federal parties planning activities that have no Federal nexus, but which could result in the incidental taking of listed animals, to apply for an incidental take permit. (A Federal nexus exists whenever an activity is conducted, funded, or licensed or permitted by a Federal agency). The application must include a habitat conservation plan (HCP) laying out the proposed actions, determining the effects of those actions on federally-listed plant and wildlife species and their habitats (and may include proposed or candidate species), and defining measures to minimize and mitigate adverse effects.

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.

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 before moving on.

Whooping cranes are unlikely to spend more than a few days in any one spot during migration. The Service suggests that Rangeland Energy include a requirement that if a whooping crane is sighted within one mile of the proposed project area during construction, that all work cease within one mile of that part of the project and the Service be contacted immediately. In coordination with the Service, work may resume after the bird(s) leave the area.

Candidate Species

Sprague's pipit was added to the candidate species list in 2010. Migratory bird species, such as the Sprague's pipit, that are candidates are not protected under the ESA, but are still protected under the MBTA. Sprague's pipits require large patches of grassland habitat for breeding, with preferred grass height between 4 and 12 inches. The species prefers to breed in well-drained, open grasslands and avoids grasslands with excessive shrubs. They can be found in lightly to heavily grazed areas. They avoid intrusive human features on the landscape, so the impact of a development can be much larger than the actual footprint of the feature. If Sprague's pipit habitat is present within your proposed project area, the Service requests that you document any steps taken to avoid and minimize disturbance of this habitat, and that you share this information with our office.

The Dakota skipper is a small to medium-sized hesperiine butterfly associated with high quality prairie ranging from wet-mesic tallgrass prairie to dry-mesic mixed grass prairie. The first type of habitat is relatively flat and moist native bluestem prairie. Three species of wildflowers are usually present: wood lily (*Lilium philadelphicum*), harebell (*Campanula rotundifolia*), and smooth camas (*Zygadenus elegans*). The second habitat type is upland (dry) prairie that is often on ridges and hillsides. Bluestem grasses and needlegrasses dominate these habitats. On this habitat type, three wildflowers are typically present in high quality sites that are suitable for Dakota skipper: pale purple (*Echinacea pallida*) and upright (*E. angustifolia*) coneflowers and blanketflower (*Gaillardia sp.*). 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.

For candidate species such as the Dakota skipper and Sprague's pipit, non-Federal project proponents have the ability to take advantage of the additional management flexibility afforded to candidate species by facilitating development and implementation of a Candidate Conservation Agreements with Assurances (CCAA). This is a formal, voluntary agreement between the Service and one or more parties to address the conservation needs of one or more candidate species. Participants voluntarily commit to implement specific actions designed to remove or reduce threats to the covered species. These agreements can involve both Federal and non-Federal lands and in some cases have been so successful that listing the species proved to be unnecessary.

Migratory Birds

The MBTA prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the MBTA has no provision for allowing unauthorized take, the Service realizes that some birds may be killed during project construction and operation even if all known reasonable and effective measures to protect birds are used. The Service Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent, and effective measures to avoid that take. Companies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

To the extent practicable, schedule construction for late summer or fall/early winter so as not to disrupt migratory birds 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, their eggs, or active nests, the Service recommends that the project proponent implement all practicable measures to avoid all take, such as suspending construction where necessary, and/or maintaining adequate buffers to protect the birds until the young have fledged. The Right of Way (ROW) where the proposed pipeline will be placed can be mowed or cleared and grubbed prior to the nesting season to make it unsuitable for most nesting bird species. The Service further recommends that if you choose to conduct field surveys for nesting birds with the intent of avoiding take, that you maintain any documentation of the presence of migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the survey(s), and any avoidance measures implemented at the project site. Should surveys or other available information indicate a potential for take of migratory birds, their eggs, or active nests, the Service requests that you contact this office for further coordination on the

extent of the impact and the long-term implications of the intended use of the project on migratory bird populations.

Even if all measures are taken to avoid take of migratory birds during the construction phase, there is likely to be some migratory bird take associated with the ongoing operation and maintenance of the proposed pipeline. The Service recommends that the project proponent develop a Conservation Plan in cooperation with the Service to identify potential impacts to migratory birds during all phases of the proposed project. This Conservation Plan should evaluate impacts both from the immediate footprint of the project as well as from the larger impacts from ongoing disturbance. We recommend that this plan include a Habitat Equivalency Analysis or other appropriate habitat evaluation method which may include funding to allow for conservation actions to be directed towards the greatest needs of migratory birds in the proposed pipeline project area.

Bald and Golden Eagles

The BGEPA prohibits anyone without a permit issued by the Secretary of the Interior from taking bald or golden eagles, including their parts, nests, or eggs. The Act provides criminal and civil penalties for persons who take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald or golden eagle, alive or dead, or any part, nest, or egg thereof. The Act defines take as pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. "Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagles return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment.

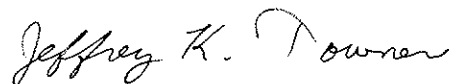
While the Service is not currently aware of any bald or golden eagle nests in the vicinity of the project area, there are numerous documented bald eagle nests in Williams County. The Service recommends surveying ½ mile out from the proposed project to determine the presence of any undocumented eagle nests. If an eagle nest is observed within ½ mile of the proposed project areas, the Service requests that the location be documented and the Service be contacted for further coordination. A permit is required for any take of bald or golden eagles or their nests. Permits to take bald eagles or their nests are available only for legitimate emergencies and as part of a program to protect bald eagles.

High Value Habitat Avoidance

- Avoid construction in native prairie, if possible, and reseed disturbed native prairie with a comparable native grass/forb seed mixture. The Service recommends planting a diverse mixture of native cool and warm season grasses and forbs. Recent research has suggested that a more diverse mix, including numerous forb species, is not only ecologically beneficial, but is also more weed resistant, allowing for less intensive management and chemical use. In essence, the more species included in a mixture, the higher the probability of providing competition to resist invasion by non-native plants. The seed source should be as local as possible, preferably collected from the nearby native prairie. Obtain seed stock from nurseries within 250 miles of the project area to insure the particular cultivars are well adapted to the local climate. The Natural Resources Conservation Service (NRCS) compiles a list of vendors in North Dakota that supply conservation seed and plants (<http://www.plant-materials.nrcs.usda.gov/pubs/ndpmcmt8152.pdf>). Additional information on native grasses and forbs may be found at the NRCS Bismarck Plant Materials Center (<http://www.plant-materials.nrcs.usda.gov/ndpmc/>).
- Make no stream channel alterations or changes in drainage patterns. Directionally bore under wetlands and intermittent and perennial streams.
- Locate construction to avoid placement of fill in wetlands along the route.
- Replace unavoidable loss of wetland habitat with functionally equivalent wetlands.
- Install and maintain appropriate erosion control measures to reduce sediment transport to adjacent wetlands and stream channels.
- Keep the disturbed area along the ROW as narrow as possible, especially in or near sensitive resources such as native prairie, wetlands, or streams.

Thank you for the opportunity to comment on this project. If additional information is required, please contact Carol Aron 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: Regulatory Office, Army Corps of Engineers, Bismarck
(Attn: D. Cimarosti)

FEDERAL THREATENED, ENDANGERED, AND CANDIDATE SPECIES
AND DESIGNATED CRITICAL HABITAT FOUND IN
WILLIAMS COUNTY, NORTH DAKOTA
March 2011

ENDANGERED SPECIES

Birds

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

Whooping crane (*Grus Americana*): Aransas-Wood Buffalo Population (264 birds) occurs in North Dakota counties during spring and fall migration between breeding and wintering areas. Whooping cranes prefer to roost overnight in shallow open water wetland habitat with good visibility during migration stopovers.

Fish

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

Mammals

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

Birds

Sprague's Pipit (*Anthus spragueii*): Endemic to the Northern Great Plains native short-to-mixed grass prairie. Sensitive to fragmentation and conversion of grassland habitat. Sprague's pipits prefer relatively large prairie patches of at least approximately 72 acres, with larger patches of at least 360 acres preferred.

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.