



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501

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RECEIVED

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Ms. Sara Ploetz
Environmental Analyst II
Enbridge Pipelines (North Dakota) LLC
1409 Hammond Avenue
Superior, Wisconsin 54880

PUBLIC SERVICE COMMISSION

Re: Enbridge Pipelines (North Dakota) LLC
Grenora Expansion Project
Williams County, ND

Dear Ms. Ploetz:

The U.S. Fish and Wildlife Service (Service) has reviewed a proposal to expand Enbridge Pipelines' (North Dakota) LLC (Enbridge) existing Grenora Pumping Station, described in a letter dated September 21, 2011, and accompanying *Wetland Delineation and Habitat Assessment Report*, dated September 2, 2011. The proposed project would involve construction of a new 40,000 barrel (bbl) tank, a Lease Automatic Custody Transfer (LACT) area to accommodate eight truck unloading units (280' X 150' each), and the installation of a 10-inch diameter pipeline from the pumping station manifold to the LACT area. The letter states that work is proposed to begin in spring, 2011; we assume this is intended to read spring, 2012. The proposed project comes under the authority of the North Dakota Public Service Commission (PSC). The letter states that the proposed project will impact jurisdictional wetlands and will thus require a permit from the U.S. Army Corps of Engineers (Corps). However, the Corps has informed us in an e-mail dated October 28, 2011, that none of the wetlands that would be impacted by the proposed project are jurisdictional.

The project is located at: T.159 N., R.103 E., Sec 11, 12, 13, 14

We offer the following comments under the authority of and in accordance with the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.), and the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250). Since the Corps does not claim jurisdiction on any of the wetlands, there is no Federal nexus for this project. (A Federal nexus exists whenever an activity is conducted, funded, or licensed or permitted by a Federal agency). However, these laws still apply. The following comments are designed to help Enbridge implement the proposed projects so that compliance with these laws is maximized.

Threatened, Endangered and Candidate Species

From our analysis of the proposed project, it does not appear that it will result in adverse effects to listed or candidate species, due to the small area being impacted and the disturbed nature of the upland habitat. However, as discussed below, we do recommend that Enbridge take steps to avoid the wetlands on the proposed site, and to mitigate for any wetland losses that occur as a result of the proposed project to ensure that the proposed project does not result in a net loss of habitat for the endangered whooping crane. Bear in mind that it is Enbridge's responsibility to make your own effects analysis and to avoid all unauthorized take of federally-listed species.

The *Wetland Delineation and Habitat Assessment Report* identifies several wetlands in the proposed project area. Wetlands such as these serve as important stopover sites for a variety of migratory birds, including the federally endangered whooping crane. The Aransas Wood Buffalo Population (AWBP) of the endangered whooping crane is the only self-sustaining migratory population of whooping cranes remaining in the wild, and there are only about 280 individuals remaining. 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 use migration stopover habitat opportunistically and may not use the same stopovers annually. Whooping cranes often stop wherever they happen to be late in the day when they find conditions no longer suitable for migration. This tendency can make for a very unpredictable pattern of stopover use, depending on daily weather conditions. The proposed project lies in the primary migration corridor, where 95 percent of the migrating whooping cranes have been sighted. A desktop analysis of the wetlands to be filled suggests that they may represent suitable stopover locations that may be used by migrating whooping cranes.

In addition to providing nesting, foraging, and roosting habitat for wildlife, wetlands serve a valuable function in the landscape by retaining water, thus reducing the risk of flooding and serving as groundwater recharge sites. These ecological services also benefit the human communities nearby.

The Service recommends that the proposed project be designed to avoid all wetlands, including non-jurisdictional wetlands to the extent practicable. If avoidance is not practicable, we recommend that Enbridge mitigate for those wetlands which cannot be avoided with functionally- equivalent wetlands.

While this particular project does not directly impact native prairie, it is located adjacent to a relatively large tract of native prairie just to the west, and the proposed project may displace some Sprague's pipit individuals that would otherwise nest near the proposed project. Additionally, the cumulative effects of all of Enbridge's projects in North Dakota may have a

significant impact on the Sprague's pipit. For candidate species such as the Sprague's pipit, non-Federal applicants have the ability to take advantage of the additional management flexibility afforded to candidate species by developing a Candidate Conservation Agreement with Assurances (CCAA). These are formal, voluntary agreements 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 are sometimes so successful that listing the species proved to be unnecessary. The Service would be happy to work with Enbridge to develop CCAA that includes your actions in North Dakota that would affect candidate species such as the Sprague's pipit.

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 agencies 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). The letter indicates that the proposed work will take place in the spring, when the potential to impact migratory birds is high. The Service recommends that the project proponent implement all practicable measures to avoid all take during the breeding season or at any other time which may result in the take of migratory birds, their eggs, or active nests. This may include the following: mowing, grubbing, and clearing the area prior to the start of the migratory bird breeding season to make it unsuitable for nesting birds and maintaining it in this condition throughout the nesting season; suspending construction where necessary; and/or maintaining adequate buffers to protect the birds until the young have fledged. 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.

Bald and Golden Eagles

The BGEPA prohibits anyone without a permit issued by the Secretary of the Interior from taking bald 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, 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.

The *Wetland Delineation and Habitat Assessment Report* states that no raptors or raptor nests were observed during the habitat assessment. The nearest wooded habitat that raptors might use is a shelterbelt surrounding an active farmstead approximately 0.45 miles from the existing Grenora facility.

High-Value Habitat Avoidance

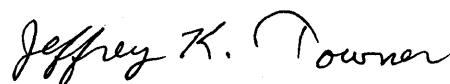
Avoid construction in native prairie, if possible, and reseed disturbed native prairie with a comparable native grass/forb seed mixture. The Service recommends planting a diverse mixture of native cool and warm season grasses and forbs. Recent research has suggested that a more diverse mix, including 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 ensure 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/ndpmmcmt8152.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.
- Locate construction to avoid placement of fill in wetlands in the project area.
- 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.

Thank you for the opportunity to comment on this project. If additional information is required, please contact Carol Aron of my staff at (701) 250-4481 or at the letterhead address.

Sincerely,



Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

Enclosures

cc: Public Service Commission
Regulatory Office, Army Corps of Engineers, Bismarck
(Attn: J. Renschler)