



United States Department of the Interior



FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, North Dakota 58501
(701) 250-4481, ndfieldoffice@fws.gov

In reply, please refer to: 2015-I-0142

AUG 10 2015

Jeffrey K. Towner
Natural Resources Team Lead
SWCA Environmental Consultants
116 4th Street, Suite 20
Bismarck, North Dakota 58501

Dear Mr. Towner:

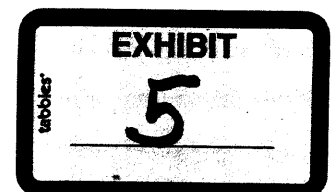
This letter is in response to your request on behalf of the Bureau of Indian Affairs (BIA) for informal consultation on the Sacagawea pipeline, a 16-inch diameter crude oil pipeline in Mountrail and McKenzie Counties, North Dakota. The proposed 70-mile project would cross privately owned lands, state trust lands and Fort Berthold Indian Reservation Lands. The applicant-prepared biological assessment (BA) was received February 13, 2015, and rescinded on May 12, 2015, via email. The Service received addendums on May 28, 2015, August 4th, 2015, and additional clarification on August 7, 2015, supporting your determinations. The BIA designated SWCA environmental consultants (SWCA) as their non-federal representative for purposes of section 7 consultation under the Endangered Species Act of 1973, as amended (16 U.S.C 1531 *et seq.*) (Act) on May 12, 2015.

In accordance with section 7 of the Act, you requested U.S. Fish and Wildlife Service (Service) concurrence with your determinations that the project “may affect, but is not likely to adversely affect” the endangered whooping crane (*Grus americana*), endangered interior least tern (*Sterna antillarum*), threatened piping plover (*Charadrius melodus*) and its critical habitat and the endangered pallid sturgeon (*Scaphirhynchus albus*). Based upon the project description and analysis of potential effects included in the BA, the Service has concluded that the effects to the whooping crane, least tern, piping plover, piping plover critical habitat and pallid sturgeon are either insignificant or discountable. Thus, the Service **concurs** with your determination.

The BA includes “no effect” determinations for the endangered gray wolf (*Canus lupus*), endangered black-footed ferret (*Mustela nigripes*), threatened rufa red knot (*Calidris canutus rufa*) and proposed endangered northern long-eared bat (*Myotis septentrionalis*). The BA was also revised on August 4 with a “no effect” determination for threatened Dakota skipper (*Hesperia dacotae*). However, based upon the provided botanical survey data, we could not determine if a “no effect” determination for Dakota skipper was appropriate. Nonetheless, there

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Exhibit 5

Sacagawea Pipeline Company, LLC

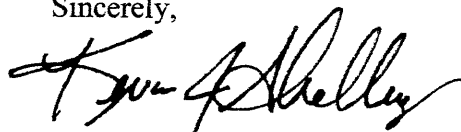


is no requirement under the implementing regulations of the Act (50 CFR Part 402) for action agencies to receive Service concurrence with "no effect" determinations, therefore the responsibility for "no effect" determinations remains with the BIA. Thus, if the BIA maintains this determination for the Dakota skipper, no further consultation is necessary. Accordingly, we recommend BIA retain the documentation for these listed resources in their decisional record for this federal action.

The Service's concurrence is based on the information contained within the applicant-prepared BA. Pursuant to the implementing regulations of the Act (50 CFR 402.13), this letter concludes informal consultation on the project. This action should be re-analyzed if (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this consultation, for example a change in the method of the Lake Sakakawea crossing; or (3) a new species is listed or critical habitat is designated that may be affected by this project.

We appreciate your efforts to ensure the conservation of listed species as part of our joint responsibilities under the Act. For further information, please have your staff contact Jessica Johnson of my staff at (701) 355-8507, or contact me at (701) 355-8512 or at the letterhead address.

Sincerely,



Kevin J. Shelley
North Dakota State Supervisor

cc: Ms. Bercier, Bureau of Indian Affairs, Aberdeen, SD
Mr. Buechler, U.S. Army Corps of Engineers, Riverdale, ND
Mr. Stelzer, Paradigm Energy Partners, LLC, Bismarck, ND