



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
3425 Miriam Avenue
Bismarck, North Dakota 58501



Grady Wolf, Project Manager
Kadrmass, Lee, and Jackson
128 Soo Line Drive
P.O. Box 1157
Bismarck, North Dakota 58502-1157

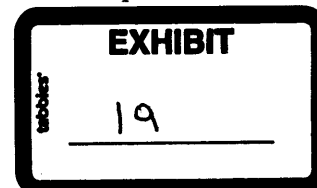
Dear Mr. Wolf:

This is in response to your May 10, 2013, request for environmental information in relation to the proposed Rolette Wind Power Project in Rolette County, North Dakota. Kadrmass, Lee, and Jackson, Inc. (KLJ) is preparing a facility siting application on behalf of the project developer, Rolette Power Development LLC. (RPD). The proposed 50 megawatt (MW) project includes 25 wind turbines, each with a capacity of 2.1-MW and associated infrastructure. At this time, it is not known where the proposed project would interconnect to the electrical grid. No federal funding is anticipated. 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.), Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d, 54 Stat. 250), the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.), and the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57).

The U.S. Fish and Wildlife Service (Service) holds certain resources in trust and manages them for the benefit of the American people. These resources include migratory birds, bald and golden eagles, inter-jurisdictional fisheries, federally-listed threatened and endangered species of plants and animals and their habitats, and units of the National Wildlife Refuge system. When planning an activity, project proponents should give careful consideration to potential impacts to these trust resources and compliance with the laws mentioned above. Additional information is provided below.

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 incidental 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, companies, and agencies that take migratory birds without identifying and implementing all reasonable, prudent, and effective measures to avoid that take. Individuals, companies, or agencies 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.

Adequate consideration for avian resources early in the site evaluation process can help to minimize impacts and facilitate project review. The most important thing a developer can do is to consult with the Service as early as possible in the development of a wind energy project. Early consultation offers the greatest opportunity for avoiding areas where development is precluded by federal law or where wildlife impacts are likely to be high and difficult or costly to remedy or mitigate at a later stage. By consulting early, project developers can also incorporate appropriate wildlife conservation measures and monitoring into their decisions about project siting, design, and operation.

Although current wind turbine technology and proper siting can help to minimize the incidence of avian deaths due to blade, aerial line, and tower strikes, the potential for direct mortality of some migratory birds will remain. Wind power developers, in concert with the Service, can help to ensure that projects proceed with as little impact to migratory birds as possible. The Service issued final Land-Based Wind Energy Guidelines (Guidelines) on March 23, 2012. The Guidelines provide a structured, scientific process for addressing wildlife conservation concerns at all stages of land-based wind energy development. They also promote effective communication among wind energy developers and federal, state, and local conservation agencies and tribes and represent the best practical approach to date for conserving species of concern that may be impacted by wind energy development. The Service recommends RPD follow the process described in the Guidelines to evaluate the potential risk to species of concern if a wind energy project were to be pursued at the proposed site. Adherence to the Guidelines is voluntary and does not relieve any individual, company, or agency of the responsibility to comply with all applicable wildlife laws and regulations.

The Service also recommends that RPD assess the risk to species of habitat fragmentation concern from development at the proposed site in accordance with the Guidelines. A list of species of habitat fragmentation concern that may occupy the proposed site can be found on the North Dakota Ecological Services Field Office website at:

http://www.fws.gov/northdakotafieldoffice/species_of_habitat_fragmentation.htm. (Habitat fragmentation is defined as the separation of a block of habitat for a species into segments, such that the genetic or demographic viability of the populations surviving in the remaining habitat segments is reduced; and risk, in this case, is defined as the probability that this fragmentation will occur as a result of the project.) Site clearing, access roads, transmission lines and turbine tower arrays remove habitat and displace some species of wildlife, and may fragment continuous

habitat areas into smaller, isolated tracts. Habitat fragmentation is of particular concern when species require large expanses of habitat for activities such as breeding and foraging.

Bald and Golden Eagles

Bald and Golden Eagles are federally-protected under both the BGEPA and the MBTA. The BGEPA prohibits anyone without a permit issued by the Secretary of the Interior from taking bald eagles (*Haliaeetus leucocephalus*) or golden eagles (*Aquila chrysaetos*), including their parts, nests, or eggs. The BGEPA 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 BGEPA defines take as pursue, shoot, shot 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 Service's overall management objective for golden eagle and bald eagle populations is to ensure no declines in breeding populations of either species. Numerous relatively minor disruptions to eagle behaviors from multiple activities, even if spatially or temporally distributed, may lead to disturbance that would not have resulted from fewer or more carefully sited activities. The accumulation of multiple land development projects or siting of multiple infrastructures that may be hazardous to eagles can cumulatively reduce the availability of alternative sites suitable for breeding, feeding, or sheltering, resulting in a greater than additive risk of take to eagles.

According to the Service's data, there is a documented bald eagle nest within the proposed project's study boundary and several other bald eagle nests in proximity to your proposed project area. We recommend using the Service's April 2013, Eagle Conservation Plan Guidance (ECPG) for land-based wind energy to guide your analysis of the project's potential to impact eagles. The guidance is available on our website at:
<http://www.fws.gov/migratorybirds/BaldAndGoldenEagleManagement.htm>.

With a documented eagle nest in the project area the proposed project could be classified by the ECPG as "Category 1 – High risk to eagles, potential to avoid or mitigate impacts is low." The Service recommends that project developers not build projects at sites in category 1 because the project would likely not meet the regulatory requirements to obtain an eagle take permit. We recommend that the RDP substantially redesign the project to at least meet the category 2 criteria.

The unauthorized take of any eagle without prior authorization is a criminal violation. 50 CFR 22.26(a)(2) describes the process for obtaining permits for eagle take that is associated with an activity, but is not the purpose of the activity.

Threatened and Endangered Species

Federally listed species that may occur within the proposed project's area of influence include the endangered whooping crane (*Grus americana*) and candidate species Dakota skipper (*Hesperia dacotae*) and Sprague's pipit (*Anthus spragueii*). 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 Service's Candidate Conservation Program provides a means for conserving these species. Early conservation preserves management options, minimizes the cost of recovery, and reduces the potential for restrictive land use policies in the future. Through Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances the Service can work with interested public and private parties to identify and address threats to candidate species or species at risk.

Because there is no Federal nexus for the proposed project, it is not necessary to make effects determinations for listed species. Private individuals and companies however, are required to ensure that their actions do not result in unauthorized "take" of federally listed animals. Take is broadly defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct". 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.

The Aransas Wood Buffalo Population (AWBP) of 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.

Endangered whooping cranes have been documented using roosting habitat in the vicinity of the proposed wind resource area. The proposed site is located outside the primary 180 mile-wide migration corridor that includes 95% of all confirmed whooping crane sightings in North Dakota. However, the presence of suitable roosting and feeding habitat for whooping cranes in the wind resource area, and confirmed whooping crane sightings, document the potential for whooping crane presence in the proposed wind resource area. A wind energy project in this wind resource area has the potential to affect whooping cranes during their annual spring and fall migration through North Dakota. Potential effects may be direct (e.g. collision mortality) or indirect (e.g.

avoidance of the site resulting in cranes seeking alternate habitat). The interactions of whooping cranes with wind turbines and wind farms are currently not fully known, although it is expected that these large birds with relatively low maneuverability are susceptible to mortality via collisions with turbines. Currently, collisions with power lines are the greatest known source of mortality for fledged whooping cranes, and have accounted for the death or serious injury of at least 46 whooping cranes since 1956.

Sprague's pipit was added to the candidate species list in 2010. Candidate species such as the Sprague's pipit are not protected under the ESA. However Sprague's pipit as a migratory bird is still protected under the MBTA. Sprague's pipits require large patches of grassland habitat for breeding, with preferred grass height between 4-12 inches (10-30 cm). 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.

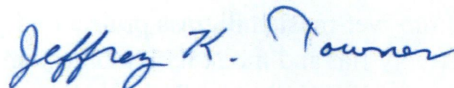
Fish and Wildlife Service Property Interests

The Service administers Waterfowl Production Areas owned in fee title as well as wetland and grassland easements throughout North Dakota. A review of Service realty records indicates Service property interests are located in the planning area. The Service has an ongoing easement acquisition program and we recommend that for Rolette County contact Frank Durbian, Wildlife Refuge Manager, J. Clark Salyer National Wildlife Refuge, 681 Salyer Road, Upham, ND 58789-0066; Phone: (701)768-2548; Email: frank_durbian@fws.gov for more specific information relative to Service easements and up to date realty records. If Service lands are proposed to be impacted, the Service will be required to conduct an analysis of impacts and examine alternatives, pursuant to NEPA.

The North Dakota Energy Conversion and Transmission Facility Siting Act (49-22), states in part: "it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment." Some of the factors that should be considered to determine if the proposed project will have minimal adverse effects include: adverse direct and indirect environmental effects; alternatives to the proposed site; the effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species; and problems raised by federal agencies. Due in part, to the potential to take bald eagles, RPD has not in the Service's opinion, demonstrated compliance with all relevant federal wildlife laws. The Service can provide technical assistance to RPD in addressing these issues as their project planning proceeds. Given the Service requirements and recommendations above, as well as possible unforeseen issues that may arise, we encourage you to build sufficient planning time for coordination with the Service into your project timeline.

Thank you for the opportunity to comment. If you require further information as project planning proceeds, please contact Terry Ellsworth of my staff, at (701) 250-4402, or at the letterhead address.

Sincerely,



Jeffrey K. Towner
Field Supervisor
North Dakota Field Office

cc: Refuge Manager, J. Clark Salyer NWR, Upham, ND
ND Public Service Commission, Bismarck, ND
Director, ND Game & Fish Department, Bismarck, ND
(Attn: G. Link)