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January 25, 2018

Hand Delivery

Mr. Darrell Nitschke
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

In re: ONEOK Rockies Midstream, L.L.C.
Bear Creek Gas Plant Expansion Project
Dunn County
Case No. PU-18-021
Our File No. 072530-000016

Dear Mr. Nitschke:

Please find enclosed eleven copies of the Migratory Bird Conservation and Compliance Plan.

Please feel free to contact the undersigned should you have any questions. Thank you.

Sincerely,



Wade C. Mann

WCM/lh
enc.

cc: Michael Dailey (via email)
Paul Hartzheim (via email)
Deborah Perry (via email)

Subject: MIGRATORY BIRD CONSERVATION AND COMPLIANCE PLAN



Date Issued: 1/24/2018 **Date Revised:**

ENVIRONMENTAL PLANS

Owner: Environment – Large Construction Projects Management

**ONEOK BEAR CREEK PLANT EXPANSION PROJECT
MIGRATORY BIRD CONSERVATION AND COMPLIANCE PLAN**

January 2018

DRAFT

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1.0 INTRODUCTION

ONEOK, Partners, L.P., its divisions, subsidiaries and affiliates (ONEOK) developed this Migratory Bird Conservation and Compliance Plan (Plan) to outline measures it will implement to avoid, minimize, and reduce possible impacts on migratory birds. Conservation measures were developed in consideration of statutory authority, regulatory guidance, and through experience with state and federal agencies on past projects in the region. The Plan demonstrates a good-faith effort by ONEOK to protect species of concern and achieve compliance with regulations as they relate to the proposed Bear Creek Plant Expansion project (Project).

2.0 PROJECT DESCRIPTION

ONEOK Rockies Midstream, L.L.C. owns and operates its Bear Creek Natural Gas Plant (Facility) approximately 5 miles north of Killdeer, Dunn County, North Dakota. The Facility originally began construction in 2015 and began operating in late 2016. The Facility has a name-plate processing capacity of 80 million standard cubic feet per day (MMscfd) of natural gas.

In response to increasing demand for natural gas processing capacity in the area, ONEOK is currently planning an expansion of the Facility to increase the gas processing capacity to 175 MMscfd (Bear Creek Natural Gas Plant Expansion or Project). All construction activities will be conducted on land owned by ONEOK within the previously developed facility footprint. The Project is currently scheduled to begin construction in Spring 2018 and be completed in 16-18 months.

3.0 REGULATORY FRAMEWORK

This Plan was developed in consideration of the federal Migratory Bird Treaty Act (MBTA), Federal Executive Order 13186 (EO 13186), and the Bald and Golden Eagle Protection Act (BGEPA). This regulatory framework is defined and described in this section as it applies to the Project.

3.1 Migratory Bird Treaty Act and Federal Executive Order 13186

The MBTA prohibits the “take” of individual birds, their eggs and chicks, and active nests. For purposes of the MBTA, “take” is defined as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, wound, kill, trap, capture, or collect” (50 Code of Federal Regulations (CFR) 10.12). Unlike the federal Endangered Species Act, the MBTA does not include harassment or destruction of habitat in its list of prohibitions or within its definition of take. The MBTA applies to migratory birds that are identified in 50 CFR 10.13 (defined hereafter as “migratory birds”).

Removal of any active migratory bird nest or any structure that contains an active nest (e.g., tree) where such removal results in take is prohibited. Activities, intentional or unintentional, resulting in take of migratory birds are prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (FWS) (e.g., authorization for incidental take of a federally listed migratory bird).

Federal EO 13186 was issued in 2001 to provide further direction to federal agencies regarding implementation of the MBTA. Federal EO 13186 states that when evaluating impacts on migratory birds under the MBTA, federal agencies should place particular importance on species of concern, priority habitat, and key risk factors.

3.2 Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (BGEPA) provides protection to bald and golden eagles in addition to the MBTA. The BGEPA prohibits the take; possession; sale; purchase; barter; offer to sell, purchase, or barter; transport; export; or import of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 USC 668(a)). “Take” under this statute is defined as to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb (50 CFR 22.3). “Disturb,” in turn, is defined as 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

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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.

4.0 MIGRATORY BIRD SPECIES POTENTIALLY UTILIZING THE PROJECT AREA

Although the MBTA provides protection for all migratory birds, the FWS developed lists of Birds of Conservation Concern (BCC) to foster proactive conservation actions by federal and state agencies and private parties by focusing first on species of concern (FWS, 2008). In addition, the United States is divided into Bird Conservation Regions (BCRs); each BCR has a list of birds present or possibly present within the region that are considered BCC. The Project is located within BCR 17 or Badlands and Prairies (U.S. NABCI Committee, 2000). ONEOK used this list as a starting point for prioritizing bird conservation measures.

5.0 POTENTIAL CONSTRUCTION IMPACTS ON MIGRATORY BIRDS

The Project is most likely to impact migratory birds if construction activities occur during the nesting season. Within the Project area, birds generally nest from late March to early August, with the peak nesting season for migratory birds taking place between April 15 and July 30. Vegetative clearing will not be required for the Project as all activities will occur within the previously developed footprint of the Bear Creek facility; however, some disturbance may occur to birds located in the area immediately surrounding the Project. Typically, take from construction activities is not of adult birds or juveniles that have fledged from the nest because they are mobile and avoid Project-related activities; instead, take is typically of eggs and nestlings due to nest destruction and loss of young.

6.0 PLAN IMPLEMENTATION AND PROPOSED CONSERVATION MEASURES

This section describes conservation measures ONEOK will implement during construction of the Project, all of which focus on efforts to minimize potential impacts on migratory birds.

6.1 Points of Contact for Plan Implementation

The Plan identifies actions and conservation measures that will facilitate compliance with the MBTA during Project construction. While it is the responsibility of each member of the Project team to comply with the Plan, ONEOK also expects that all Project staff will notify the Environmental Manager when an active migratory bird nest is identified so that appropriate protection measures can be implemented, as described in more detail below.

Points of contact for plan implementation can be found in Appendix A.

6.2 Environmental Training

Prior to initiating construction activities, ONEOK will conduct environmental training for company and contractor supervisory personnel. The training program will include conservation measures described within this Plan. In addition, ONEOK will provide large-group training sessions before each crew commences construction with periodic follow-up training for groups of newly assigned personnel. Contractors will be obligated to comply with the conservation measures and protect active nests or face disciplinary actions, including dismissal from the Project.

In addition, Project staff will be informed that they should assume that any active bird nest they encounter should be protected unless a qualified avian biologist determines the nest need not be protected. If additional active nests are identified after pre-construction surveys, the additional nests must be brought to the attention of the Points of Contact identified in Appendix A, so that appropriate conservation measures can be implemented.

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6.3 Surveys

Where constructing the Project outside of the peak nesting season for migratory birds is not feasible, ONEOK will conduct ground surveys to identify migratory bird nests that could be impacted by construction activities. The peak nesting season for migratory birds in the Project area begins April 15 and ends July 30 at which time surveys will cease. The survey program will be implemented by an Environmental Inspector (EI) who will conduct a walkover of the Project and immediately surrounding areas to identify if nests are present. If a nest is observed, the EI will contact the Environmental Project Manager, who will coordinate follow-up surveys with a trained biologist(s) with experience in bird identification (hereinafter referred to as Avian Biologist).

As the Project will be constructed within the previously developed facility footprint, surveys will be conducted adjacent to the planned construction workspace and along access roads where Project traffic could impact nesting birds such as vegetated two-tracks or newly established roads. Nest surveys will typically be completed 2 to 5 days ahead of construction activities, but no more than 14 days.

Conservation measures to be implemented around nests identified during these surveys are described below. Upon completion of surveys and marking of active nests and associated buffers as discussed below, the surveyed area found free of active nests will be available for construction.

6.4 Activity Restriction Buffers

Varying activity restriction buffers around active nests and leks will be utilized as conservation measures for the Plan. The buffers that will be implemented based on the species of bird or class of bird are described within the following sections.

6.4.1 Birds of Conservation Concern

For nests of BCC, a buffer will be placed 25 feet around active nests. Construction activities within the buffer will be avoided where feasible. If necessary to meet key Project objectives, ONEOK may authorize limited activity within the buffer to move equipment along the construction right-of-way and through a nest buffer in order to facilitate construction in adjacent areas. See section 5.5, Nest Monitoring for more information.

6.4.2 Raptor Species

Based on previous field surveys and review of desktop data, it has been determined that there is limited nesting habitat for raptors in the vicinity of the Project. However, if raptor nests are identified, spatial buffers and seasonal timing restrictions will be placed around active nests in accordance with Table 5.4.2-1. No eagle nest may be destroyed by Project activities without a permit from the FWS, regardless of whether the nest is inactive or active per the BGEPA.

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Table 5.4.2-1^a
Bear Creek Plant Expansion Project
Raptor Species Active-Nest Buffer Distances and Dates

Species Common Name	Species Latin Name	Spatial Buffer (miles)	Seasonal Timing Restrictions
American Kestrel	<i>Falco sparverius</i>	0.125	April 1 - August 31
Bald Eagle ^b	<i>Haliaeetus leucocephalus</i>	0.5	January 1 - August 15
Boreal Owl	<i>Aegolius funereus</i>	0.125	February 1 - July 31
Burrowing Owl	<i>Athene cucularia</i>	0.25	April 1 - September 15
Common Barn Owl	<i>Tyto alba</i>	0.125	February 1 - September 15
Cooper's Hawk	<i>Accipiter cooperii</i>	0.25	March 15 - August 31
Eastern Screech-owl	<i>Megascops asio</i>	0.125	March 1 - August 15
Ferruginous Hawk	<i>Buteo regalis</i>	1.0	March 15 - July 31
Golden Eagle	<i>Aquila chrysaetos</i>	0.5	January 15 - July 31
Great Gray Owl	<i>Strix nebulosa</i>	0.25	March 15 - August 31
Great Horned Owl	<i>Bubo virginianus</i>	0.125	December 1 - September 31
Long-eared Owl	<i>Asio otus</i>	0.125	February 1 - August 15
Merlin	<i>Falco columbarius</i>	0.125	April 1 - August 31
Northern Goshawk	<i>Accipiter gentilis</i>	0.5	March 1 - August 15
Northern Harrier	<i>Circus cyaneus</i>	0.25	April 1 - August 15
Northern Pygmy-Owl	<i>Glaucidium gnoma</i>	0.25	April 1 - August 1
Northern Saw-whet Owl	<i>Aegolius acadicus</i>	0.125	March 1 - August 31
Osprey	<i>Pandion haliaetus</i>	0.25	April 1 - August 31
Peregrine Falcon	<i>Falco peregrinus</i>	0.5	March 1 - August 15
Prairie Falcon	<i>Falco mexicanus</i>	0.5	April 1 - August 31
Red-tailed Hawk	<i>Buteo jamaicensis</i>	0.33	March 15 - August 15
Sharp-shinned Hawk	<i>Accipiter striatus</i>	0.25	March 15 - August 31
Short-eared Owl	<i>Asio flammeus</i>	0.25	March 15 - August 1
Swainson's Hawk	<i>Buteo swainsoni</i>	0.25	May 1 - August 31
Western Screech-owl	<i>Megascops kennicottii</i>	0.125	March 1 - August 15

^a This table shall be updated with regional specific species, buffers, and restrictions prior to construction.
^b Bald eagle nests are protected, even if not active.

6.4.3 Other Migratory Bird Buffer Restrictions

For nests of other bird species not described in the preceding sections, a buffer will be placed 100 feet around active nests. Whenever possible, a qualified avian biologist will be called out on site to determine and establish an appropriate species-specific buffer. In instances where this buffer cannot be implemented, ONEOK will attempt to reconfigure the workspace to leave the vegetation containing the nest undisturbed.

6.5 Nest Monitoring

If present, active nests will be monitored by Avian Biologists and buffers will be maintained until the young fledge. Nests will generally be visited every 7 to 10 days once identified. Once a nest has been determined to be inactive by the Avian Biologist, the nest buffer will be removed and construction activities may continue without restriction.

If a nest buffer and its associated restrictions pose a substantial risk to key Project objectives, then ONEOK may determine that construction activities can proceed through a buffer (i.e., pass-through), avoiding direct impact to the nest. Where ONEOK authorizes a pass-through of a non-eagle raptor buffer or BCC buffer, the Avian Biologist will first attempt to

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determine the stage of development of the young in the nest. If young are near fledging, ONEOK may choose to maintain the buffer until the young fledge upon evaluation of alternatives. If the nest is at an earlier stage of development (e.g., eggs just laid, young just hatched), construction equipment will be allowed through the buffer in an escalating frequency and duration. As the disturbance in the buffer is escalated, the nest will be monitored by the Avian Biologist to determine if the adults or young are being disturbed by construction activities. If the Avian Biologist notes that bird activities appear to be such that the success of the nest is at risk, construction actions will be reduced to a point where nest success is not at risk from construction.

Nest monitoring may also include determining that construction activities are not visible from a non-eagle raptor nest location. On a case-by-case basis ONEOK, with input from the Avian Biologists, may determine that construction can proceed through the non-eagle raptor buffer without disturbing the nest. If this similar exception is to be applied to an eagle nest, vigilant monitoring of the nest must occur in order to ensure the eagles are not disturbed.

If non-raptor nests are identified adjacent to the construction workspace after ground clearing activities have commenced in an area, ONEOK will attempt to limit extensive disturbance in the area, but will assume that because the birds initiated nesting after construction began in an area that the nesting individuals are acclimated to construction-related noise and disturbance and, therefore, additional protections will not be implemented.

7.0 CONCLUSION

ONEOK is committed to implementing the pre-construction survey program, environmental training for key construction personnel, appropriate spatial buffers, seasonal timing restrictions, and nest monitoring. ONEOK expects its Project team to take reasonable, prudent, and effective measures towards protection of migratory birds. While the MBTA is the responsibility of all members of the Project team, ONEOK has designated key staff (identified in Appendix A) to oversee and help implement this Plan. Please contact these individuals if you have questions regarding implementation of the Plan.

8.0 REFERENCES

- U.S. Fish and Wildlife Service (FWS). 2008. Birds of Conservation Concern 2008. U.S. Fish and Wildlife Service, Division of Migratory Bird Management. 87 pp.
- U.S. Fish and Wildlife Service (FWS). 2007. National Bald Eagle Management Guidelines.
- U.S. NABCI Committee. 2000. North American Bird Conservation Initiative Bird Conservation Regions map. U.S. Fish and Wildlife Service, Arlington, Virginia. <http://www.nabci-us.org/aboutnabci/map.pdf>

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APPENDIX A

Key Points of Contact

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KEY POINTS OF CONTACT

Position	Name	Phone #	Responsibility
ONEOK Project Manager	Glenn Craft	918-588-7806	Responsible party for implementing the Plan
ONEOK Environmental Project Manager	Deborah Perry	918-588-7530	Primary Point of Contact
ONEOK Construction Manager	TBD	TBD	Key point of contact in the field during construction
Environmental Inspector	TBD	TBD	Key point of contact in the field during construction
Merjent Project Manager	Paul Hartzheim	612-746-1618	Environmental Consultant Point of Contact
Avian Biologist	TBD	TBD	Trained biologist for nests found during construction

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