

Wade C. Mann
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
wmann@crowleyfleck.com

March 20, 2019

Via Hand Delivery & Electronic Mail (ndpsc@nd.gov)

Adam Renfandt
Analyst Public Utilities Division
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RE: ONEOK Bakken Pipeline, L.L.C.
Demicks Lake Pipeline Project
Siting Application – Case No. PU-18-399

Dear Mr. Renfandt,

This follows our meeting on February 26, 2019 regarding ONEOK Bakken Pipeline, L.L.C.'s ("ONEOK") Demicks Lake Pipeline Project ("Project"). As requested, enclosed please find the following information in support of ONEOK's Siting Application for the Project:

- Selection Criteria Maps (Exhibit B.4) updated to include the Surficial Aquifers layer;
- Table 7.1-1 (Exclusion Areas) updated to list specific threatened/endangered species potentially located in the vicinity of the Project; and,
- One USB containing:
 - GIS shapefiles (.zip file) with the following information derived through desktop reviews and field biological surveys for the Project:
 - Eagle nests
 - Wellhead Community Protection Areas
 - Surficial aquifers
 - Whooping crane flyway
 - Unsurveyed areas; and,
 - GIS shapefile (.zip folder) of field-delineated Dakota Skipper (*Hesperia dacotae*) suitable habitat within the Project Corridor.

29 PU-18-399 Filed 03/20/2019 Pages: 3
Letter enclosing supporting documents
Crowley Fleck, PLLP
Wade C. Mann, Attorney

In addition, below please find information related to the eagle nest locations and Dakota Skipper. Please note this information has also been provided to the U.S. Forest Service (“USFS”) and the U.S. Fish and Wildlife Service through a draft applicant-prepared Biological Assessment in support of the Project’s application for a Special Use Authorization for an easement to construct the project across approximately nine (9) miles of land managed by the USFS.

Eagle nests:

On behalf of ONEOK, Merjent, Inc. (“Merjent”) received known eagle nest location data from the USFS on July 24, 2018. Three (3) historic golden eagle nests were identified within 1 mile of the proposed Project route. Field surveys conducted in late July 2018 attempted to locate these nests during the course of habitat assessment field surveys; however, only one nest was relocated.

Merjent received additional data from the North Dakota Game and Fish Department on November 1, 2018. This dataset included the three (3) nests identified by the USFS, as well as one additional golden eagle nest. Additional field surveys to locate historic nests and to determine and/or confirm nest activity will be conducted in April 2019. These surveys will utilize the survey methods outlined in the 2018 USFS Biological Survey Guidelines for cliff, tree, or high structure nesting raptor species

Dakota Skipper:

Habitat Suitability Surveys

Field surveys to delineate suitable Dakota Skipper habitat were conducted during the 2018 field season by Midwest Natural Resources, Inc. (“MNR”). The U.S. Fish and Wildlife Service (“USFWS”) has not created a survey protocol specifically for identifying suitable habitat. However, in the USFWS’ 2018 *Dakota Skipper* (*Hesperia dacotae*) *North Dakota Survey Protocol* for identifying the presence or absence of individual Dakota Skippers (the “Protocol”), likely suitable habitat areas were discussed and described as grasslands or discrete areas within grasslands that were untilled, predominantly native, and had appropriate larval food and nectar plant species present. Locations of habitat potentially suitable for Dakota Skipper were recorded in the field and then used to inform qualified surveyors of locations to survey for presence/absence of individual Dakota Skippers.

Dakota Skipper Presence/Absence Surveys

Presence or absence surveys were conducted in areas delineated as suitable Dakota Skipper habitat by three (3) qualified Dakota Skipper surveyors (individuals with 2018 Dakota Skipper permits issued under Section 10(a)(1)(A) of the federal Endangered Species Act) between June 27 and July 17, 2018. The decision to initiate surveys on June 27, 2018 was based on the detection of Dakota Skipper flights on June 26, 2018 at the Pasture 12 National Grassland reference site, as recommended by the Protocol.

Individual Dakota Skipper (5 total) were found in one discrete area along the Project’s survey corridor. Because Dakota skipper can travel up to 1 kilometer (“km”), other habitat within 1 km is

assumed to potentially have Dakota Skipper present. The Project route crosses four (4) habitat area within 1 km of the Dakota Skipper found during 2018 surveys; these areas are being avoided through Horizontal Directional Drill (“HDD”) installation in addition to the general species conservation measures developed in coordination with USFS and USFWS as outlined in the draft BA. The BA remains under review by the USFS and USFWS.

Additional field surveys to delineate suitable Dakota Skipper habitat will be conducted in 2019 in previously unsurveyed areas where route changes have occurred since the end of the 2018 field survey season. Additionally, presence or absence surveys will be conducted in 2019 in areas where suitable habitat patches will be intersected by the workspace, but were not surveyed for individuals in 2018. If Dakota Skipper are observed in any of these areas, they will likewise be avoided by the HDD method and other conservation measures developed in consultation with USFWS.

Current Status of Endangered Species Act Section 7 Consultation

As part of its obligations under the National Environmental Policy Act for the pending Special Use Authorization, the USFS is consulting with the USFWS under Section 7 of the federal Endangered Species Act. Per its normal NEPA process, the USFS requested ONEOK to develop a draft applicant prepared BA for the Project for review by the USFS and USFWS. ONEOK has been in communication with both agencies regarding the Project since May 2018. ONEOK has worked with both agencies to discuss survey methods and results, and to develop avoidance and conservation measures to prevent any potential for impacts to federally listed species, including the Dakota Skipper. The consultation process described above will conclude once the agencies have finalized their review. ONEOK continues to actively engage with both agencies throughout this process.

If you have any questions on this material, please contact me directly.

Respectfully,



Wade C. Mann

WCM/lh

Enclosures: Updated Selection Criteria Maps (Exhibit B.4)
GIS Shapefiles (as noted above)
Updated Application Table 7.1-1

cc: John Morrison (Crowley Fleck)
Casey Furey (Crowley Fleck)
David McSweeney (ONEOK)
Michael Dailey (ONEOK)
Edwin Zedaker (ONEOK)