



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, WY 82009



In Reply Refer To:
06E13000/WY1210279

JUL 06 2012

Carl Daly, Air Program Director
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Mr. Daly:

Thank you for your letter dated June 19, 2012, received in our office on June 22, concerning your request for concurrence for your no adverse effect determination on federally listed species on the proposed Cheyenne Light, Fuel & Power (CLF&P) federal Prevention of Significant Deterioration Permit (PSD) for the construction of the Cheyenne Prairie Generating Station 220MW Combustion Turbine Project (Project). The U.S. Fish and Wildlife Service (Service) provided the Environmental Protection Agency with a species list for this Project in a letter dated September 13, 2011 (WY11SL0365), and met with representatives regarding this Project on February 16, 2012. The Project proponent, CLF&P, a wholly owned subsidiary of Black Hills Power & Light Co. (Black Hills Corp.), is applying for the federal PSD permit under the Clean Air Act.

The Project is located approximately 7 miles east of Cheyenne, adjacent to Dry Creek Wastewater Facility in Laramie County, Wyoming. Project activity includes the installation of five 40-megawatt natural gas combustion turbine generators along with associated towers, heaters, and an emergency generator. Associated infrastructure proposed with the Project include an approximately 1.75-mile, 115-kilovolt transmission line connecting the facility to the electricity grid east of the site, an approximately 10-mile natural gas pipeline connecting the facility to a metering station south of the site, and wastewater pipelines to the water treatment plant. We understand that Black Hills Corp. has committed to directionally drilling the natural gas pipeline approximately 300 meters outside of the floodplain of Crow Creek, allowing for adjustments as needed, to avoid impacts to suitable habitat for federally listed species.

Your letter requested informal consultation with Service pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended, 50 CFR § 402.13, and concurrence with your determinations that the Project may affect but is not likely to adversely affect threatened the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), the Colorado butterfly plant (*Gaura neomexicana coloradensis*), and the Ute ladies'-tresses (*Spiranthes diluvialis*)

Endangered, Threatened, Proposed, and Candidate Species

According to your letter, potentially suitable habitat for Preble's meadow jumping mouse is found along Crow Creek which will be crossed by the proposed natural gas pipeline south of the facility site. Based on the commitment made by Black Hills Corp. to directionally bore beneath, and thereby eliminate impacts to, the floodplain of Crow Creek, you have determined that the Project may affect but is not likely to adversely affect the Preble's meadow jumping mouse. Due to the proponent's avoidance and minimization measures to avoid impacts to habitat for the Preble's meadow jumping mouse, the Service concurs that the Project may affect but is not likely to adversely affect this species.

Suitable habitat for the Colorado butterfly plant and Ute ladies'-tresses is found along Crow Creek, and suitable habitat for Colorado butterfly plant additionally occurs along Porter Draw which will be crossed by the proposed natural gas pipeline. No critical habitat for Colorado butterfly plant is located within the vicinity of the Project site. Black Hills Corp. has committed to performing a summer 2012 survey for these species and will avoid or drill under plants if they are found. Therefore, based on the commitment of Black Hills Corp. to directionally drill beneath the floodplain of Crow Creek and to avoid or drill under locations of these plants, you have determined that the Project may affect but is not likely to adversely affect the Colorado butterfly plant, its critical habitat, and Ute ladies'-tresses. Due to the proponent's avoidance and minimization measures to avoid impacts to Colorado butterfly plant, its critical habitat, and Ute ladies'-tresses, the Service concurs with your determination that the Project may affect but is not likely to adversely affect these species.

Migratory Birds

The Migratory Bird Treaty Act (MBTA), enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs, except as permitted by regulations, and does not require intent to be proven. Section 703 of the MBTA states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird...." The Bald and Golden Eagle Protection Act prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

According to your letter, the closest raptor nest currently in the Project area occurs approximately 0.36 miles from the site. Additionally, a survey for nests within the vicinity of the Project area will take place in the spring of 2012 and 2013, prior to and during facility construction. We understand that Black Hills Corp. has committed to avoid the nesting season or will provide spatial buffers for species of concern, will adhere to an avian protection plan, and will implement avoidance and minimization measures as outlined by the Avian Power Line Interaction Committee. If nest manipulation is proposed for this Project, the Project proponent should contact the Service's Migratory Bird Office in Denver at 303-236-8171 to see if a permit can be issued for this Project. No nest manipulation is allowed without a permit. If a permit cannot be issued, the Project may need to be modified to ensure take of a migratory bird or eagle, their young, eggs or nest will not occur.

This concludes informal consultation pursuant to the regulations implementing the Act. This Project should be re-analyzed if new information reveals effects of the action that may affect listed species or designated or proposed critical habitat (1) in a manner or to an extent not considered in this letter, (2) if the action is subsequently modified in a manner that causes an effect to a listed species or designated or proposed critical habitat that was not considered in this letter, and/or (3) if a new species is listed or critical habitat is designated that may be affected by this Project.

For our internal tracking purposes, the Service would appreciate notification of any decision made on this Project (such as issuance of a permit or signing of a Record of Decision or Decision Memo). Notification can be sent in writing to the letterhead address or by electronic mail to FW6_Federal_Activities_Cheyenne@fws.gov.

We appreciate your efforts to ensure the conservation of endangered, threatened, proposed, and candidate species and migratory birds. If you have any questions regarding this letter, please contact Julie Proell Reeves of my office at the letterhead address or phone (307) 772-2374, extension 232.

Sincerely,



R. Mark Sattelberg
Field Supervisor
Wyoming Field Office

cc: Black Hills Corporation, Environmental Manager, Rapid City, SD (T. Rogers)
WGFD, Non-game Coordinator, Lander, WY (B. Oakleaf)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (M. Flanderka)

