



United States Department of the Interior



FISH AND WILDLIFE SERVICE
North Dakota Ecological Services Field Office
3425 Miriam Avenue
Bismarck, North Dakota 58501

APR 02 2015

In Reply Refer To:
2012-CPA-0140

Mr. David Rosenkrance
Bureau of Reclamation
P.O. Box 1017
Bismarck, North Dakota 58502-1017

Dear Mr. Rosenkrance:

This is in response to your March 10, 2015, request for informal consultation on the Northwest Area Water Supply Project (Project). The Project was authorized by the Garrison Diversion Reformulation Act of 1986 and the Dakota Water Resources Act of 2000 as part of the Municipal, Rural, and Industrial (MR&I) Grant Program. It is intended to address long-standing water supply and water quality problems experienced by residents of northwestern North Dakota and to provide adequate, high-quality water to serve the projected population growth in the Project Area through 2060. Your letter and accompanying March 2015 biological assessment (BA) were received on May 10.

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), Reclamation has requested U.S. Fish and Wildlife Service (Service) concurrence with your determination that the Project “may affect, is not likely to adversely affect” the endangered interior least tern (*Sterna antillarum*), the threatened piping plover (*Charadrius melodus*), designated critical habitat for the piping plover and the endangered whooping crane (*Grus americana*). Based upon the project description and analysis of potential effects presented in the BA, the Service has concluded that the effects to these federally-listed resources are either insignificant or discountable. Thus, the Service **concurs** with your determination.

The BA also indicates the Project will have “no effect” on the threatened rufa red knot (*Calidris canutus rufa*), the endangered pallid sturgeon (*Scaphirynchus albus*), the endangered gray wolf (*Canis lupus*), the threatened Dakota skipper (*Hesperia dakotae*), proposed critical habitat for the Dakota skipper, and the threatened northern long-eared bat (*Myotis septentrionalis*). There 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 Reclamation. Accordingly, we recommend Reclamation retain the documentation and

analysis for these listed resources in the decisional record for this federal action.

Discussion

This Project has a long history of coordination and cooperation between Reclamation and the Service. In 2001, an Environmental Assessment (EA) (Houston Engineering Inc. et al. 2001) and Finding of No Significant Impact (FONSI) were completed for the Project (Reclamation 2001). Potential impacts to federally threatened and endangered species were evaluated in the Final EA and documented in the FONSI (Reclamation 2001). The Service considered Reclamation's no effect findings for threatened or endangered species from construction, operation or maintenance of the Project as appropriate (Memorandum from Allyn Sapa, Field Supervisor, Service, Bismarck, ND to Dennis Breitzman, Area Manager, Reclamation dated July 23, 1997). Any potential effects, including those identified during final design and construction would be avoided through design features and mitigation measures.

Construction of the Project began in April 2002. In October 2002, the Province of Manitoba, Canada, filed a legal challenge in the U.S. District Court for the District of Columbia claiming that the EA on the Project was inadequate under NEPA (*Government of the Province of Manitoba vs. Ken Salazar, Secretary, U.S. Department of the Interior et al.*). A court order issued in February 2005, remanded the case to Reclamation for completion of additional environmental analysis. A second court order issued in April of that year allowed construction to proceed on Project features that would not predetermine a future decision on the means for water treatment to reduce the potential risk of transferring invasive species.

Construction continued between 2002 and 2012 on the 45 miles of main transmission pipeline from Lake Sakakawea to the City of Minot, along with several segments of the bulk distribution pipelines and associated facilities. During this construction all design features and mitigation measures to avoid any potential impacts to federally-listed species were implemented in collaboration with the designated Impact Mitigation Assessment team identified in the original Project EA/FONSI. The Service participated with Reclamation on the Impact Mitigation Assessment team to ensure no effects occurred to federally-listed species. These actions are summarized in Appendix A of the current Project draft Project SEIS.

In response to the Court's order for further analysis, Reclamation initiated an EIS focused on different water treatment methods to reduce the risk of unintentionally transferring potentially invasive species from Lake Sakakawea into the Hudson Bay basin. The analysis focused on environmental impacts that could occur due to pipeline leaks and failure of the water treatment systems and included an evaluation for impacts to federally-listed species. Once again, the analysis led to a conclusion that a "no effect" determination was appropriate for the federally-listed species and the Final EIS on Water Treatment was published in December 2008 (Reclamation 2008). Reclamation signed a Record of Decision (ROD) in January 2009.

In February 2009, the Department of Justice notified the court that Reclamation had completed the Final EIS and ROD. Shortly thereafter, the Province of Manitoba filed a supplemental complaint contending that the Final EIS was insufficient. The State of Missouri later filed a complaint against the Department of the Interior and the U.S. Army Corps of Engineers (Corps) in the same U.S. District Court (Court) alleging that Reclamation's Final EIS was insufficient and that the Corps failed to complete a separate NEPA analysis for the Project.

The Court consolidated the Missouri suit with the Manitoba suit and, in March 2010, the Court issued an order remanding the case to Reclamation for further environmental review with respect to two specific issues: (1) cumulative impacts of water withdrawals on Lake Sakakawea and the Missouri River; and (2) consequences of transferring potentially invasive species into the Hudson Bay basin. The 2005 injunction was modified by the Court in 2013, halting further construction pending the completion of additional NEPA review to address these two issues.

During the process of preparing the draft SEIS, Reclamation requested a list of species and critical habitat for the purposes of updating the species list for this Project and updating section 7 consultation under the ESA. This new list of species was obtained from the Service's IPaC (Information, Planning, and Conservation System) for this Project in 2012. This list was confirmed by the Service in 2013 and 2014 (personnel communication with Terry Ellsworth and Heidi Riddle respectively – both with the North Dakota Ecological Services Field Office Bismarck, ND). The Service also participated in Cooperating Agency meetings and also reviewed preliminary drafts of the SEIS for trust resource issues, including federally-listed, candidate and proposed species, and critical habitat.

Accordingly, the March 2015 BA describes the effects of providing bulk water service to a 10-county region generally located in northwest North Dakota, referred to as the Project Area. The effects analysis focused on the anticipated effects associated with the new construction that would be necessary to complete the remaining components of the proposed action as well as any effects that may arise from operations. This includes pipeline segments, storage reservoirs, and modifications to pump stations. Operational considerations focused on groundwater withdrawals from the Minot and Sindre aquifers (1.0 – 2.6 million gallons per day) during June, July, and August and surface water withdrawals from the Missouri River at a rate approximately equal to the annual Project demand. Based on the analysis presented in the BA for each species, the Service agrees with Reclamation's conclusions that the federally-listed resources mentioned above will have extremely low likelihood of being exposed and/or respond in a biologically meaningful manner to potential Project stressors during the life of the Project. As a result, the effects of the Project are expected to be insignificant or discountable.

The Service's concurrence is based on the information contained within the March 2015, biological assessment. Pursuant to the implementing regulations of the Act (50 CFR 402.13), this letter concludes informal consultation on the subject action. This action should be re-

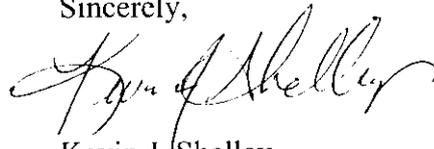
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analyzed if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this consultation; or (3) a new species is listed or critical habitat is designated that may be affected by this action.

We appreciate your efforts to ensure the conservation of listed species as part of our joint responsibilities under the Act. If additional information is required, please contact me directly at (701) 355-8512.

Sincerely,



Kevin J. Shelley
North Dakota State Supervisor
Ecological Services

Literature Cited

Bureau of Reclamation. 2001. Northwest Area Water Supply Project FONSI and EA. U.S. Bureau of Reclamation. Bismarck, ND.

Houston Engineering, Inc., American Engineering P.C., Montgomery Watson, and Bluestem Incorporated. 2001. Northwest Area Water Supply Project Final Environmental Assessment. Prepared for North Dakota Water Commission, North Dakota Garrison Diversion Conservancy District and U.S. Bureau of Reclamation. Bismarck, ND.