



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Nebraska Field Office
9325 South Alda Road
Wood River, Nebraska 68883



IN REPLY REFER TO
FWS/R6/NEFO
DCN 065165

March 16, 2017

FWS-NE: 2013-164

Ms. Mary D. Hassell
Office of Environmental Quality and
Transboundary Issues (EQT)
Bureau of Oceans and International
Environmental and Scientific Affairs (OES)
U.S. Department of State
Washington, D.C. 20520

**RE: Request for Reinitiation of Section 7(a)(2) Consultation for the TransCanada
Keystone XL Pipeline Project**

Dear Ms. Hassell:

This is in response to your letter dated March 15, 2017, requesting reinitiation of section 7 consultation and concurrence that the proposed Keystone XL Pipeline Project (Project) may affect, but is not likely to adversely affect, the federally threatened northern long-eared bat (*Myotis septentrionalis*). The March 15, 2017, letter also evaluates the potential for Project effects on the federally threatened Dakota skipper (*Hesperia dacotae*) and reevaluates conclusions drawn for several species, including applicability as previously considered in section 7 consultation documents. Section 7 consultation documents include the Biological Opinion (Opinion) dated May 15, 2013, the U.S. Department of State's (Department) request to reinitiate section 7 consultation for the rufa red knot (*Calidris canutus rufa*), and the U.S. Fish and Wildlife Service's (Service) August 27, 2015, concurrence with a finding of not likely to adversely affect for that species. It should be noted that the Department's request to reinitiate section 7 consultation and our response represents the culmination of many productive discussions between our agencies; this collaboration began in 2015 when the rufa red knot was listed and resumed in February 2017 with discussion about the northern long-eared bat.

Northern Long-eared Bat

The Service has reviewed the Department's March 15, 2017, letter and attached analysis of Project effects on the northern long-eared bat. In that letter, the Department and its applicant TransCanada commit to ensuring implementation of two conservation measures designed to

protect maternity roost trees and hibernacula for the species consistent with *Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Northern Long-Eared Bat*, ((50 CFR Part 17, Federal Register Notice, January 14, 2016 (81 Fed. Reg. 1900)). Given the commitment to implement these conservation measures, the Service concurs with the Department's determination that the proposed Project may affect, but is not likely to adversely affect, the northern long-eared bat. Please note that the northern long-eared bat is state-listed as threatened in the States of Kansas, Nebraska, and Montana. We recommend coordination with the Nebraska Game and Parks Commission, Kansas Department of Wildlife and Parks, and Montana Fish, Wildlife, and Parks as other state requirements may apply.

Dakota Skipper

The Department completed an evaluation of the potential effects of the Project on the Dakota skipper and concluded there would be no effect on the species as there is no habitat available in the area of the Project. The Service has reviewed this evaluation as well as the best available information for the species including survey and habitat information for the Dakota skipper in South Dakota. Based on that review, we agree with the rationale utilized by the Department as it is based on a reasoned analysis of the best available information and we acknowledge the no effect determination.

Previously Considered Species

We acknowledge and appreciate the reevaluation of the species previously considered in the May 15, 2013, Opinion in addition to the rufa red knot, which was the subject of the Department's request to reinitiate section 7 consultation, dated June 9, 2015, following listing of this species as federally threatened. The Department's reevaluation was based on whether Project modifications or new information about the Project might indicate new effects to the previously considered species to the extent that reinitiation of section 7 consultation may be necessary. Based on the results of the reevaluation, the Department confirmed that the conclusions of the previous section 7 consultation documents regarding anticipated Project effects on listed species remain valid and that reinitiation of section 7 consultation is unnecessary. We agree with the Department's conclusions based on a review of the available information including Project maps and our knowledge of Project effects on these species. This is predicated on the completion of required pre-construction population surveys for the federally endangered American burying beetle (*Nicrophorus americanus*) to confirm that the amount of take authorized in the Incidental Take Statement (ITS) will not be exceeded for this species as annual populations are cyclic and dependent on weather conditions.

Greater Sage-grouse and Sprague's Pipit

The Service determined that the greater sage-grouse (*Centrocercus urophasianus*) and Sprague's pipit (*Anthus spragueii*) were not warranted for listing in October 2015 and April 2016, respectively. The May 15, 2013, Opinion identified several conservation measures for these species. Given the current status of these species, however, we confirm that these conservation measures are no longer in force. We appreciate the Department's commitment to coordinate with the Bureau of Land Management and the States of Montana and South Dakota as other requirements for these species may still apply.

The Service acknowledges the Department's recognition of its responsibilities as the recipient of the ITS as outlined in your letter and included in the May 15, 2013, Opinion. We appreciate the Department's commitment to provide the appropriate oversight of the applicant TransCanada to ensure implementation of reasonable and prudent measures, which continue to remain in force, and encourage implementation of conservation measures for the listed species. We confirm that the ITS covers incidental take caused by the applicant TransCanada provided that such take is in compliance with the ITS terms and conditions.

This concludes section 7 consultation pursuant to the Endangered Species Act. As provided in 50 C.F.R. § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control is authorized by law and if: 1) the amount or extent of incidental take is exceeded; 2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this Opinion. The Service views the Department's March 13, 2017, request for reinitiation and this response as supplements to the May 15, 2013, Opinion.

The Service appreciates the opportunity to work cooperatively with the Department in assuming a shared responsibility for protecting federal trust fish and wildlife resources along the proposed Project route in Montana, South Dakota, Nebraska, and Kansas. If you have any questions or require technical assistance, please do not hesitate to contact Mr. Robert Harms at robert_harms@fws.gov; (308)382-6468, extension 208.

Sincerely,



Eliza Hines
Nebraska Field Supervisor

Cc: TransCanada Corporation, Alberta, Canada (Attn: Jim White)
BLM, Reno, NV (Attn: Jim Stobaugh)