



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

5600 American Boulevard West, Suite 990  
Bloomington, Minnesota 55437-1458



IN REPLY REFER TO:

FWS/R3/AES

**AUG 06 2013**

Mr. Mark Frazier  
Chief, Regulatory Branch  
Kansas City District Office  
U.S. Army Corps of Engineers  
635 Federal Building, Room 402  
Kansas City, Missouri 64106

Dear Mr. Frazier:

On July 24, 2013, the U.S. Fish and Wildlife Service (Service) issued a biological opinion (BO) on the proposed construction, operation, and maintenance of Enbridge Pipelines FSP L.L.C.'s (Enbridge) Flanagan South Pipeline, in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Flanagan South Pipeline (FS Pipeline) is a new crude petroleum pipeline in the States of Illinois, Missouri, Kansas, and Oklahoma.

By email dated July 26, 2013, the U.S. Army Corps of Engineers (Corps), Kansas City District Office requested clarification about the American burying beetle (ABB) and the Corps' permit areas relative to this BO. The Corps determined that this project may affect, but is not likely to adversely affect the ABB within Corps permit areas in Bates, Cass, Chariton, Johnson, Lafayette, Macon, Randolph and Saline counties, Missouri; and in Allen, Bourbon, Linn, Montgomery, Neosho and Wilson Counties, Kansas. The Service's BO describes impacts to ABBs for the entire project, including construction, operation, and maintenance of the pipeline. The Service anticipates that the impacts of the entire project are likely to result in take of ABBs; therefore, the Service does not concur with your determination that the project is not likely to adversely affect the ABB.

Our comments here specifically address anticipated impacts to the ABB in Kansas. As described on page 53 of the Service's BO, the ABB was not detected during surveys completed in 2013 in Kansas. Given that construction of the pipeline will be completed prior to the next ABB active season in 2014, we concluded that the construction phase of the project is not expected to result in adverse effects to ABBs in Kansas. The Service's analysis goes on to conclude that only pipeline operation and maintenance phases of the project are expected to result in impacts to the ABB in Kansas (page 54 of the BO). In further support of this analysis, the Incidental Take Statement (ITS) associated with the BO states that the Bureau of Indian Affairs, the entity issuing easements for pipeline construction, operation and

maintenance, is responsible for all Reasonable and Prudent Measures for the ABB. The BO and ITS included all impacts and the documents for the entire project remain accurate and unchanged. Provided you complete your permit actions as described in the BO, then your consultation requirements have been met.

We hope this information provides the clarification you requested. Thank you for your cooperation during this consultation. Please refer any questions or comments to Karen Herrington (850-348-6495 or karen\_herrington@fws.gov) of this office.

Sincerely,



Lynn Lewis  
Assistant Regional Director

cc: Mr. Danny McClendon, Corps' St. Louis District Office, St. Louis, MO  
Mr. G. Ward Lenz, Corps' Rock Island District Office, Rock Island, IL  
Mr. Robert Impson, BIA, Muskogee, OK  
Assistant Regional Director, Ecological Services, Albuquerque, NM  
Assistant Regional Director, Ecological Services, Denver, CO  
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Karen Herrington, FWS, St. Charles, MO