

Housing and Urban Development, Washington, DC 20410-0050.

**FOR FURTHER INFORMATION CONTACT:**

Persons desiring any further information about the Performance Review Board and its members may contact Juliette Middleton, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 402-3058. (This is not a toll-free number.)

Dated: November 7, 2013.

**Maurice A. Jones,**

*Deputy Secretary.*

[FR Doc. 2013-27259 Filed 11-13-13; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R3-ES-2013-N199;  
FXES1112030000F2-234-FF03E00000]

#### NiSource, Inc.; Record of Decision, Habitat Conservation Plan, Environmental Impact Statement, and Permit Issuance

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

We, the U.S. Fish and Wildlife Service (Service), are advising the public of the availability of the Record of Decision (hereafter, "ROD") on an Incidental Take Permit (hereafter, "ITP") issued pursuant to the Endangered Species Act of 1973, as amended (ESA). The ITP authorizes NiSource, Inc., to take 10 federally listed species over a 50-year period. For availability of the record of decision and associated documents, see **ADDRESSES**.

**DATES:** The ROD is available effective September 13, 2013.

**ADDRESSES:** *Document availability:* The ROD and other documents associated with the decision are available for review, subject to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a.) and Freedom of Information Act, by any of the following methods:

- *Internet:* You may access an electronic copy of the ROD and related documents on the Internet at <http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html>.

- *U.S. Mail:* You may obtain an electronic copy of the ROD, Final Environmental Impact Statement, and Multi-Species Habitat Conservation Plan on compact disk by submitting a request in writing to the U.S. Fish and Wildlife Service within 30 days of the date of publication of this notice; see **FOR FURTHER INFORMATION CONTACT**.

- *In-Person:* Printed copies of the documents are available for public inspection and review (by appointment only), at the office listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

Thomas J. Magnuson, Regional HCP Coordinator, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458; 612-713-5467.

**SUPPLEMENTARY INFORMATION:** We are advising the public of the availability of the ROD associated with an ITP application received from NiSource, Inc., pursuant to the ESA. The ITP issued to NiSource authorizes the take of 10 federally listed species over a 50-year period.

NiSource prepared a multi-species habitat conservation plan (MSHCP) to cover a suite of activities associated with operation, maintenance, and construction of their existing natural gas pipeline system in the States of Delaware, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

The Service was the lead Federal agency for review of the application and preparation of the Final Environmental Impact Statement (FEIS) for the proposed permit issuance. The Federal Energy Regulatory Commission (FERC), the U.S. Army Corps of Engineers (USACE), the U.S. Department of Agriculture (USDA) Forest Service (FS) Eastern Region and Southern Region, and the National Park Service (NPS) Southeast Region served as cooperating agencies. Availability of the FEIS was published in the **Federal Register** on June 7, 2013 (78 FR 34402), and June 14, 2013 (78 FR 35928).

#### Background

NiSource, Inc., headquartered in Merrillville, Indiana, is engaged in natural gas transmission, storage, and distribution, as well as electric generation, transmission, and distribution. NiSource, Inc.'s wholly owned pipeline subsidiaries, Columbia Gas Transmission, LLC; Columbia Gulf Transmission LLC; Crossroads Pipeline Company; Central Kentucky Transmission Company; and NiSource Gas Transmission and Storage Company (companies referred to collectively as "NiSource"), are interstate natural gas companies whose primary operations are subject to the Natural Gas Act (15 U.S.C. 717) and fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the U.S. Department of Transportation

(USDOT). NiSource applied for authorization under the ESA to take species in the course of engaging in otherwise lawful gas transmission and storage operations. An ITP application under the ESA requires submission of a Habitat Conservation Plan in conjunction with the application.

On July 16, 2009, NiSource filed an application with the Service for a section 10(a)(1)(B) ITP for 10 ESA-listed species known to occur within NiSource's operating territory. These species include the Indiana bat (*Myotis sodalis*), bog turtle (*Glyptemys muhlenbergii*), Madison Cave isopod (*Antrolana lira*), clubshell mussel (*Pleurobema clava*), northern riffleshell mussel (*Epioblasma torulosa rangiana*), fanshell mussel (*Cyprogenia stegaria*), James spiny mussel (*Pleurobema collina*), sheepsnose mussel (*Plethobasus cyphus*), Nashville crayfish (*Orconectes shoupi*), and American burying beetle (*Nicrophorus americanus*). The MSHCP was prepared to cover a 50-year timeframe.

The Covered Land for the MSHCP and ITP includes 12 counties in Maryland, Ohio, Pennsylvania, and West Virginia, and a 1-mile-wide corridor associated with 15,562 miles of existing NiSource right-of-way within the 14 aforementioned States.

The Covered Activities, or those NiSource activities that fall under the purview of the MSHCP, include a wide range of operation, maintenance, and new construction activities that are specific to NiSource's wholly owned pipeline subsidiaries and to the Covered Land specified in the MSHCP.

The MSHCP evaluated 42 species that could potentially occur within the NiSource Covered Land, and that could potentially be impacted by NiSource Covered Activities. However, after analysis of the 42 species and the Covered Land, it was concluded that NiSource Covered Activities will not adversely impact 32 of the 42 species evaluated. Therefore, NiSource requested incidental take for the remaining 10 species, for which take could be minimized, but not avoided.

In addition to the 42 species evaluated in the MSHCP, 47 additional ESA-listed, proposed, or candidate species are either known to occur or potentially occur within the NiSource Covered Land. Potential impacts to these species are discussed in the FEIS and in the Service's Biological Opinion.

#### NEPA Compliance

Issuance of an ITP by the Service to NiSource is a Federal action that may affect the quality of the human environment and therefore is subject to

review under the National Environmental Policy Act (NEPA). To comply with the NEPA, the Service prepared an FEIS which analyzed potential impacts that could result from issuance of an ITP to NiSource and the subsequent implementation of their MSHCP. The ROD that is made available at this time announces the Service's decision to issue the ITP and is the final decision under the NEPA.

### Public Involvement

On October 11, 2007, the Service published a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** (72 FR 57953), to solicit participation of Federal, State, and local agencies, Tribes, and the public to determine the scope of the EIS and provide input relative to issues associated with the proposed MSHCP project. In addition to the publication of the NOI, the scoping process included informal stakeholder and agency consultations, 13 public scoping meetings, and a mailing to approximately 1,300 known interested parties. Public scoping continued until December 8, 2007, and the Scoping Report is appended to the FEIS.

In accordance with the NEPA, a draft EIS and MSHCP were circulated for public review and comment. The public review period was initiated with the publication of the Notice of Availability (NOA) in the **Federal Register** on July 13, 2011 (76 FR 41288), and the public comment period was extended for an additional 90 days (76 FR 63950). Three public meetings were announced in the NOA, and were held in Columbus, Ohio, on August 16, 2011; Lexington, Kentucky, on August 17, 2011; and Charleston, West Virginia, on August 18, 2011. The comment period closed on December 13, 2011. A variety of comments were received on the DEIS and associated MSHCP, and are available for request by the methods described under **ADDRESSES**. Responses to these comments are appended to the FEIS.

Availability of the FEIS was announced in the **Federal Register** on June 7, 2013 (78 FR 34402), and June 14, 2013 (78 FR 35928). Comments received in response to the Notice of Availability of the FEIS are discussed in the ROD.

### Authority

We provide this notice under Section 10(c) of the ESA (16 U.S.C. 1531, 1539(c)) and its implementing regulations (50 CFR 17.22 and 17.32), and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR Part 46). We evaluated the application, associated documents, and comments submitted to

determine whether the application met the requirements of section 10(a)(1)(B) of the ESA. The Service has made its decision to issue an ITP to NiSource for the take of 10 species in accordance with their MSHCP and associated IA.

Dated: November 6, 2013.

**Lynn Lewis,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2013-27230 Filed 11-13-13; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

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### BLM Director's Response to the Idaho Governor's Appeal of the BLM Idaho State Director's Governor's Consistency Review Determination

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) is publishing this notice to explain why the BLM Director is denying the Governor of Idaho's recommendations regarding the Proposed Land Use Plan Amendments analyzed in the Gateway West Final Environmental Impact Statement (EIS).

#### FOR FURTHER INFORMATION CONTACT:

Brian Amme, Acting Division Chief for Decision Support, Planning and NEPA, telephone 202-912-7289; address 1849 C Street NW., Room 2134LM, Washington, DC 20240; email [bamme@blm.gov](mailto:bamme@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. A copy of the Gateway West Final EIS and Proposed Land Use Plan Amendments is available on the BLM Wyoming Web site at: [http://www.wy.blm.gov/nepa/cfodocs/gateway\\_west/index.html](http://www.wy.blm.gov/nepa/cfodocs/gateway_west/index.html).

**SUPPLEMENTARY INFORMATION:** On April, 26, 2013, the BLM released the Gateway West Final EIS and Proposed Land Use Plan Amendments. On June 27, 2013, the Governor of Idaho (Governor) submitted a Governor's Consistency Review and Finding of Inconsistency for the Gateway West Final EIS and Proposed Land Use Plan Amendments (Finding) to the BLM Idaho State

Director (State Director). The State Director determined the Governor's Finding was outside the scope of the Governor's Consistency Review process and did not accept the Governor's recommendations. A written response was sent to the Governor on July 26, 2013, addressing the issues raised in the Governor's Finding.

On August 23, 2013, the Governor appealed the State Director's decision not to accept his recommendations to the BLM Director. The BLM Director issued a final response to the Governor affirming the State Director's decision. Pursuant to 43 CFR 1610.3-2, the substantive portions of the Director's response to the Governor are printed as follows:

"With regard to your Greater Sage-Grouse Plan concerns, your letter did not identify inconsistencies between your Plan and any of the BLM proposed land use plan amendments for the Gateway West Transmission Project. The regulations that provide for the Governor's consistency review process at 43 CFR 1610.3-2, require BLM to ensure that resource management plans or plan amendments 'are consistent with officially approved or adopted' State and local government resource related plans, and policies and programs in those plans so long as the plans 'are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands.' The regulations further provide the Governor of the State involved in a proposed plan or amendment to identify inconsistencies between State or local plans and the proposed plan or amendment and provide recommendations to the BLM State Director. The consistency review submitted by the Governor must identify, with specificity, how a proposed plan amendment is inconsistent with specific State or local plans. If the State Director denies such recommendations, the Governor is afforded an opportunity to appeal the BLM State Director's denial of recommendations to the BLM Director pursuant to 43 CFR 1610.3-2(e).

"Your letter to the BLM State Director and your appeal do not meet the regulatory requirements by specifically identifying inconsistencies between the Greater Sage-Grouse Plan and the proposed land use plan amendments in the Gateway West Transmission Project FEIS. Your appeal only generally states that your Plan, which you submitted to the BLM on July 1, 2013, is inconsistent with the Gateway West National Environmental Policy Act (NEPA) process. The scope of the Governor's consistency review process is narrow. It