

Record of Decision

South Dakota Prairie Winds Project

Partial Term Relinquishment and Release of Easement For Wind Energy Development Final Environmental Impact Statement

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Prepared by

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INTRODUCTION

Summary

This Record of Decision (ROD) has been developed by the U.S. Fish and Wildlife Service (Service) in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended. The purpose of this ROD is to document the Service's decision to release and relinquish certain easement rights for the construction, operation, and maintenance of the proposed wind energy generation facilities on lands in Aurora County and Brule County, South Dakota on which the Service holds a "Grant of Easement for Waterfowl Habitat Protection" (grassland easement). The easements are administered by the Service as part of the National Wildlife Refuge System.

Pursuant to NEPA implementing regulations (40 CFR 1506.3) the Service participated as a cooperating agency in the preparation and release of an Environmental Impact Statement (EIS) prepared by the Department of Energy, Western Area Power Administration (Western) and Department of Agriculture, Rural Utilities Service (RUS) for the proposed Prairie Winds Project. The action selected by the Service corresponds to the preferred alternative of the EIS.

Background/Purpose and Need

Western and RUS issued an EIS on the South Dakota Prairie Winds (SDPW) Project in response to a request from Prairie Winds, SD1, Incorporated (PW

SD1), a wholly owned subsidiary of Basin Electric (Basin), to interconnect with the transmission system owned and operated by Western. Basin has requested financing for the project from the RUS. PW SD1 has also submitted an application to the Service to locate a portion of the project (8 out of 108 turbines) on lands on which the Service holds a grassland easement. The application requires an action on the part of the Service. The Service participated as a cooperating agency in the preparation of the EIS by providing resource impact information, maps, and site locations of easement properties within the project area to Western and RUS. The notice of availability of the Final EIS was published in the Federal Register on July 30th, 2010.

The purpose of the proposed project is to develop a technically feasible and economically viable wind-powered electrical generation resource using identified wind resources in Jerauld, Aurora, and Brule Counties. The project is designed to meet a portion of the projected increase in regional demands for electricity produced from renewable resources. Several States within Basin Electric's service territory, including Colorado, Minnesota, Montana, North Dakota and South Dakota, have adopted Renewable Energy Objectives (REOs) that require renewable generation to meet a certain percentage of retail sales. The REOs adopted in the various States include both mandatory and voluntary goals that range from 10 to 25 percent of energy production to be generated or procured from an eligible energy

technology by a specified deadline. Deadlines for compliance range from 2015 to 2025.

THE DECISION

Upon careful consideration of concerns and issues, Service guidelines, Secretary of the Interior Order 3285 on Renewable Energy Development by the Department of Interior, and other appropriate laws and regulations, and with consideration for the need for this project, the Service has decided to accept the Crow Lake Alternative and release and relinquish certain easement rights for the construction, operation, and maintenance of proposed wind energy generation facilities on impacted lands in Aurora County and Brule County, South Dakota, on which the Service holds a grassland easement. Specifically, the Service will release and relinquish certain easement rights on 25.65 acres of land protected by grassland easement in exchange for easements of equal or greater habitat and monetary value on currently unprotected lands elsewhere.

The Service agrees to a partial term relinquishment under the following conditions:

1. Disturbance to native sod upland sites will be kept to an absolute minimum (turbine footprint, access road, underground collector lines).
2. Temporarily disturbed grasslands will be re-vegetated by seeding only weed-free, native plant species. Non-native plants will not be utilized. Restored sites will be monitored by the Service

to ensure successful re-vegetation.

3. All facilities shall be sited according to the recommendations made by the Service.
4. PW SD1 shall comply with Section 106 of the National Historic Preservation Act.

Partial Term Relinquishment and Release Document:

The partial term relinquishment document was developed to provide wind energy developers and FWS managers with a method to address unavoidable impacts associated with the construction of the wind facilities on easement encumbered lands. Specifically, the Service relinquishes and releases certain easement rights on land protected by grassland easement in exchange for easements of equal or greater habitat and monetary value on currently unprotected lands elsewhere. The rights are relinquished for wind generation purposes only, for the duration of the wind energy project. When the wind energy project terminates, the full easement interest automatically reverts back to the Service. The easement is released only under the footprint of the project (turbine pad, roads and associated facilities). The perpetual easement rights acquired by the Service on the remainder of these easements are not affected. The replacement acres are also permanently protected by Service easements.

Some conditions included in the partial term relinquishment document include:

- Decommissioning Plan:** A decommissioning plan must be prepared which requires that all turbines, roads and infrastructure be removed and disturbed grasslands be restored to Service requirements once the wind energy project terminates. All facility decommissioning, site restoration, and reclamation measures will be completed within 18 months of termination of the project. The decommissioning plan will provide an estimate of the cost associated with implementation of the plan.
- Letter of Credit:** Based on the cost estimate developed in the decommissioning plan, PW SD 1 shall furnish a continuing financial surety in the form of an irrevocable letter of credit (ILC) from a federally-insured financial institution rated investment-grade or higher. The ILC ensures that adequate funds will be available to cover the estimated cost of removing structures and facilities associated with the wind development project and restoring those impacted acres back to grassland habitat. The amount of the ILC will be adjusted annually based on changes in the Consumer Price Index to reflect the percent change for inflation to cover the estimated removal and surface restoration costs.
- Replacement Acres:** All released easement lands must be replaced with lands of **similar or greater biological and financial value.** The Service will identify acceptable replacement acres prior to construction of the project. PW SD 1 will be responsible for purchase and conveyance of the replacement acres to the Service. Upon abandonment or termination of the wind project all wind development equipment and infrastructure must be removed and all impacted areas must be restored to the Service's satisfaction. At that time the full easement interest on the released acres will automatically revert back to the Service. The replacement acres will also remain as perpetual easements with the Service to be managed as part of the National Wildlife Refuge System, with the eventual result being that the Service receives two acres for every acre released. Refuge Managers will coordinate closely with their realty office and wind company representatives during the completion of this process.

ALTERNATIVES

The alternatives for the Prairie Winds Project are described in detail in the EIS. Alternatives that were developed were: No Action Alternative; the Winner Alternative which would involve the installation of wind turbines on 261 acres within an area of approximately 83,000 acres containing no Service easements; and the Crow Lake Alternative (Preferred Alternative) which would involve the installation of

wind turbines on 131 acres within an area of approximately 36,000 acres.

Under the No Action Alternative, the Service would not partially release and relinquish its easement rights. Wind turbines would have to be sited on lands not encumbered with Service easements, or the project would not be built.

Under the Winner Alternative, a partial term relinquishment from the Service would not be necessary because the project area contains no Service easements. However, this alternative would result in greater overall habitat impacts, including impacts to the endangered American burying beetle, and was therefore not selected.

Under the Preferred Alternative, an exchange of lands utilizing a partial term relinquishment and release document would be used to address impacts to Service easement interests.

MEASURES TO MINIMIZE ENVIRONMENTAL HARM

To protect wetlands: Wetland basins in the entire project area have been delineated, including lands that have and do not have an easement. All roads, turbines, transmission line structures, collector lines, and crane walk routes have been designed to avoid all wetlands on lands where the Service holds an easement.

To protect grassland-dependent wildlife: Wildlife may be affected by the wind energy project because of habitat loss, avoidance of the project area, or direct mortality. Installation of wind turbines and roads will cause, to some degree, disturbance to wildlife.

Whether or not this disturbance will be significant and/or long-term, or if they will be temporary effects is unknown at this time. Current uncertainty is because little information exists on wildlife avoidance and direct mortality associated with wind turbines in large intact grassland areas. In consultation with Western and the Service, PW SD1 will develop a monitoring plan to collect data on avian collisions with wind turbines. The study results will provide information to determine whether conservation measures implemented with the intent of avoiding and minimizing take have been effective, allowing the Service to assess whether additional measures would need to be considered. Surveys associated with the monitoring plan will take place one year prior to construction and for two years following construction. PW SD 1 will bear all costs associated with the avian monitoring study.

Some grassland birds will be temporarily displaced during construction of the wind generation facilities on lands encumbered with a grassland easement; however, tens of thousands of acres of similar grassland habitat surrounds the project area and birds displaced by construction activities are expected to use nearby habitat. Acquisition of replacement acres will be completed prior to construction which will minimize habitat loss to grassland birds. To minimize the impact to grassland-dependent wildlife, construction will to the extent possible occur outside of the nesting season. Long-term impacts at the end of the project, following the eventual removal of the generating structures and landscape reclamation, are speculative; however, grassland nesting

birds are expected to return in numbers similar to present day levels.

To protect vegetation: A primary concern of the Service is the conversion of native prairie vegetation from the wind turbine footprints and access roads required for the proposed project. The Service will work with Basin on siting of facilities to minimize the impacts to the greatest degree possible. Any disturbed grasslands will be restored to Service specifications.

To protect cultural resources: Cultural resources studies in the project area were conducted and all sites identified will be avoided.

To protect threatened and endangered species: The Service identified one federally-listed endangered species in the project area which may be adversely affected: the whooping crane. A Biological Assessment (BA) prepared by RUS and Western concluded that the project “may affect, is likely to adversely affect” whooping cranes. In the subsequent Biological Opinion, the Service concluded that the project was not likely to jeopardize the continued existence of the whooping crane.

Proposed Project Conservation Measures

Basin has committed to marking all new overhead transmission lines associated with this project to reduce the risk of collision by whooping cranes. This and other conservation measures proposed for the whooping crane are described in the final BA, the EIS, Basin’s Operations and Monitoring Plan, PWSD1 Project, Crow Lake, South Dakota (Derby 2010), and in a proposal by Basin titled: Summary of

Compensatory Habitat Measures for the PW SD1 Wind Project.

The BA for this project included plans to address the possible occurrence of whooping cranes during the construction phase of the project. Trained personnel will monitor whooping crane use of the SDPW project area during fall and (if necessary) spring construction activities that coincide with migration of whooping cranes from the Aransas-Wood Buffalo Population (AWBP). Observations of whooping cranes by project personnel made as a result of monitoring or other incidental sightings in the project area and surrounding vicinity during construction will be immediately reported to the Service. Construction activities will be suspended within one mile of the observation of a whooping crane, leaving birds undisturbed until they are no longer observed. The intent is to minimize the potential for disturbance, displacement, and harm to roosting and foraging whooping cranes during construction of the project.

The Operations and Monitoring Plan has three main components relative to the whooping crane, proposed to be conducted for a minimum of three years post-construction:

1. Document use of the project area and a two-mile buffer surrounding the wind development by whooping cranes during the spring and fall migration periods, such that turbine operation can be curtailed if whooping cranes are seen in the project area (turbines within two miles of whooping cranes will be shut down).

2. Document use of the project area and a two-mile buffer surrounding the wind development by sandhill cranes (*Grus canadensis*).
3. Document and report any mortality of whooping cranes or sandhill cranes.

Whooping crane and sandhill crane (a surrogate species for whooping crane) surveillance during spring and fall migrations will be conducted for a minimum of three years post-construction, with reevaluation in coordination with the Service after that time to determine the need for additional monitoring. Observers will be trained to identify whooping cranes and observe without harassing them; sightings will be reported to the Service immediately; reports of any whooping crane occurrences will be developed and provided to the Service; mortality searches will be performed; any injuries or casualties detected will follow procedures outlined in the AWBP, Whooping Crane Contingency Plan; and annual reports relative to any cranes will be generated and provided to the Service.

The Summary of Compensatory Habitat Measures for the PW SD1 Wind Project includes a proposal to offset the potential for whooping crane avoidance of 50 wetlands (76.7 acres) within the SDPW based on the possibility that whooping cranes may completely avoid wetlands within 0.5 mile of croplands (potential feeding sites) that are also within 0.5 mile of wind turbines. The Service submits that the 0.5 mile proximity to crop ground is not relevant as whooping

cranes often fly two to five miles from roosting sites to forage and they may forage within wetland roost sites or grasslands. If cranes generally avoid turbines by at least 0.5 mile, the SDPW project could result in a permanent loss of roosting habitat consisting of 76 wetlands, consisting of 294.97 acres. If cranes were to avoid all wetlands within the project boundary, assuming any basins within the area represent suitable roosting habitat, that total would rise to the full 517 wetland acres identified within the boundary. Per Basin's Summary:

“... Basin Electric suggests statewide average land values be used for calculating the value of the offset. The average value of cropland in South Dakota is \$1,400/acre and the average value of pastureland is \$480/acre; the combined average value is \$890/acre (Reference: Land Values and Cash Rents, 2009 Summary, USDA National Agricultural Statistics Service SP SY 3 09 dated August, 2009). Based on these averages, the total estimated value of the wetland offsets would be 76.7 acres x \$890/acre = \$68,263. It should also be noted that the offset is strictly for indirect impacts, as no temporary or permanent impacts to wetlands are anticipated to be caused

by project construction or operation.”

The Service submitted comments regarding this proposal suggesting additional compensation is appropriate and indicating that the 0.5 mile distance to cropland is not relevant, but a response from RUS indicated no substantive changes would be made.

FINDINGS REQUIRED BY OTHER LAWS, REGULATIONS AND MANAGEMENT DIRECTION

The development of the PW SD 1 EIS and this decision are guided by, and authorized under several laws, regulations and Service policies described as follows:

National Environmental Policy Act of 1969, as amended, requires environmental analysis of actions proposed by Federal agencies.

The Council on Environmental Quality’s regulations implementing NEPA at 40 CFR 1501.6 provide for the participation of another federal action agency as a cooperating agency in the developing of an Environmental Assessment or Environmental Impact Statement. In this instance, the Service elected to be a Cooperating Agency to Western and RUS.

Endangered Species Act of 1973 16 U.S.C. 1531-1544, 87 Stat. 884, as amended -The Endangered Species Act (ESA) provides for the conservation and recovery of listed species of plants and animals native to the United States and its territories. Section 7 of the ESA requires Federal agencies to insure that any action authorized, funded or carried

out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

Migratory Bird Treaty Act (MBTA) – The MBTA prohibits the taking of any migratory birds without authorization from the Secretary of the Interior.

Agency regulations on the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-ee, require uses of the National Wildlife Refuge System (System) to be compatible.

PUBLIC INVOLVEMENT

Western and RUS employed various methods to provide information to the public and solicit input. The Agencies invited Federal, State, local and tribal governments; Basin Electric; and other interested persons and groups to participate in defining the scope of the EIS. Venues for participation included two scoping meetings and one interagency meeting. In addition to receiving comments at meetings, the Agencies invited interested individuals to submit written comments via mail, fax, e-mail and/or the project website.

Notice of Intent

The “Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement” was published in the *Federal Register* ([FR] 74 FR 15718) on April 7, 2009. The Notice of Intent (NOI) included information on the proposed project, agency actions, times and locations for the April 28 and April 29, 2009 scoping meetings, and contact information for

questions pertaining to the proposed project. Paid advertisements announcing the public scoping meetings were published in *Indian Country Today*, *Mitchell Daily Republic*, *Plankinton South Dakota Mail*, and the *Winner Advocate*. *Indian Country Today* is a national, Native American interest publication, while the others are local newspapers.

Regional Director

Date

In addition, Western and RUS mailed post card scoping notices and letters in April, 2009 to over 4,000 potentially interested persons. The mailing list included Federal, State and local agencies; elected officials; Native American tribes; members of the public; and addresses within seven miles of the proposed project alternatives.

IMPLEMENTATION

This Record of Decision documents the Service's decision to immediately enter into a Partial Term Relinquishment and Release of Waterfowl Habitat Protection Easement for permanent and temporary disturbances due to the construction, maintenance and operation of wind energy facilities on lands where the Service holds a grassland easement. The decision may be implemented immediately upon publication in the Federal Register of a Notice of Availability of the ROD. The Service must substantially comply with the decision made in the ROD (FWS manual, 550 FW 3.3 (A)(4)). The actions, terms, and conditions stated in the ROD are enforceable by Federal agencies and private parties. The ROD can be used to compel compliance with or execution of mitigation, monitoring, and, enforcement measures identified therein (40CFR 1505.3).

