



United States Department of the Interior

FISH AND WILDLIFE SERVICE



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West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241

July 25, 2008

Mr. Clyde N. Thompson
Forest Supervisor
Monongahela National Forest
200 Sycamore Street
Elkins, West Virginia 26241

Re: Berry Energy, Inc. B-800 Natural Gas Pipeline Project; Cheat Ranger District

Dear Mr. Thompson:

This letter is in response to your July 10, 2008 Biological Assessment (BA) for the proposed Berry Energy, Inc. B-800 Natural Gas Pipeline Project in the Fernow Experimental Forest of the Cheat Ranger District of the Monongahela National Forest (MNF) in Tucker County, West Virginia. The following comments are provided pursuant to the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of endangered and threatened species.

On July 7, 2006, the U.S. Fish and Wildlife Service (Service) issued a programmatic Biological Opinion (programmatic BO) for the implementation of the 2006 Revised Monongahela National Forest Land and Resource Management Plan (Forest Plan). The programmatic BO established a two-tiered consultation process for Forest Plan activities, whereby the Service reviews, as they are developed, site-specific projects that may affect federally listed species. The Service determines if any effects will occur as a result of a site-specific project in a manner, or to an extent, not evaluated or previously disclosed and discussed in the Service's programmatic BO. We consider this site-specific project analysis for the Berry Energy B-800 Natural Gas Pipeline Project to be "Tier 2" of the consultation process, with the programmatic consultation (and resulting BO) constituting the "Tier 1" consultation. Our project-specific (Tier 2) consultation focuses on: 1) compliance with the reasonable and prudent measures and associated terms and conditions in the programmatic BO; 2) consistency with the scope and effects previously analyzed and disclosed in the programmatic BO and associated Biological Evaluation; 3) project-specific incidental take vs. take estimated in the programmatic BO; and 4) project-specific reasonable and prudent measures and associated terms and conditions (i.e., for non-jeopardy determinations). In the event of a "may affect" but "not likely to adversely affect" determination for a specific project that is consistent with the programmatic BO, no further evaluation by the Service is necessary and section 7(a)(2) consultation will be considered complete for that project (e.g., via a concurrence letter documenting the conclusion of informal consultation).

Description of the Proposed Action

The MNF has received a plan from Berry Energy, Inc. (Berry Energy) to install a buried natural gas pipeline (gas pipeline) from the B-800 gas well on MNF land. Berry Energy holds an oil and gas lease on the privately owned mineral rights under the lands on which the proposed gas pipeline would be located. The MNF's proposed action is to approve the pipeline location as shown in Berry Energy's plan.

The proposed pipeline is approximately 8,200 feet long. Berry Energy has requested a 30-foot wide right-of-way for sections of the proposed route that do not follow a Forest System road (FR) (cross country) (totaling 5500 feet long), and a 15-foot wide right-of-way adjacent to and contiguous with the existing clearing on FR 709 (totaling approximately 2500 feet long). A 30-foot wide right-of-way is needed to safely operate construction equipment and install buried gas pipeline in the terrain present along the cross country sections. A narrower, 15-foot wide cleared area may be used if located adjacent to the existing clearing of a forest road because the existing road clearing provides working space for construction equipment operation. Finally, a 200-foot long section would be placed within the existing clearing of FR 701 near the access road to the B-800 gas well. Portions of the planned gas pipeline route would be installed on areas that the MNF previously approved for Berry Energy's use. This includes the B-800 gas well access road location on the east side of the project area, and the Gas Well B-782 pipeline location on the west side of the project area. Berry Energy plans to install the gas pipeline in the summer to fall of 2008. A complete description of the proposed project, and the conservation measures that have been incorporated, are provided on pages 11-15 of the July 10, 2008 project BA and is incorporated here by reference.

The action area is defined as all areas to be affected directly or indirectly by the proposed action. For this BO, the action area includes the direct and indirect effects on 9.75 acres on MNF lands and another 2.0 acres on private lands. The action area also includes the hibernacula, and bats that utilize those hibernacula, that could be affected by changes to the foraging and roosting and swarming habitat surrounding caves in the action area. In this case, Big Springs Cave, Two Lick Cave, and Coal Run Cave are considered to be within the action area.

Species Not Likely To Be Adversely Affected

We have reviewed the information contained in the July, 2008 BA which describes the results of surveys conducted in the project area and the project's potential effects on federally listed species. Botanical surveys were conducted along the entire length of the proposed pipeline on June 11, 2008 by MNF staff with expertise in plant identifications and surveys. No listed plant species were located during those surveys. Based on the results of those surveys, as well as the additional surveys and habitat descriptions for plants and animals provided within the BA, we concur with your determinations of no effect, or may affect/not likely to adversely affect, for the Virginia big-eared bat (*Corynorhinus townsendii virginianus*), Cheat Mountain salamander (*Plethodon nettingi*), West Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), shale barren rock cress (*Arabis serotina*), running buffalo clover (*Trifolium stoloniferum*), small-whorled pogonia (*Isotria medeoloides*), and Virginia spiraea (*Spiraea virginiana*). We concur with these determinations either due to the lack of habitat or known occurrences in the vicinity of

the proposed project, or because the proposed activities should not affect the species breeding, feeding, or sheltering behaviors as described in the BA.

Species Likely To Be Adversely Affected

As described in the Service's programmatic BO, adverse effects are likely to occur to the Indiana bat (*Myotis sodalis*) from harvesting or tree removal that may occur. Given the nature of activities associated with the proposed project, we concur with your determination that incidental take of Indiana bats is possible within the action area. However, based on the implementation of reasonable and prudent measures and associated terms and conditions from the programmatic BO, and the proposed site-specific avoidance and conservation measures that will minimize the impact of any incidental take as described in the Effects of the Action section of this Tier 2 BO, we have concluded that activities associated with the project will not result in adverse effects to the Indiana bat beyond those that were previously disclosed and discussed in the Service's programmatic BO. This Tier 2 BO identifies the incidental take anticipated due to implementation of proposed activities in the action area, and the cumulative total of incidental take which has been authorized during this calendar year (Table 1).

Status of the Indiana Bat

The current status of the Indiana bat, its life history, and continued threats are thoroughly described in pages 27 – 43 of the July 2006 programmatic BO. This description remains current with the exception of the identification of a new threat, White Nose Syndrome.

White-nose syndrome (WNS) refers to a white fungus on the noses of many affected bats. Fungus has also been observed on the ears, tails, and wing membranes of bats. WNS was first documented at four sites in New York in the winter of 2006-07 (although recently reviewed photographs of bats at a fifth site in February 2006 point to a likely earlier start). At least 30 sites in four states (New York, Vermont, Massachusetts, and Connecticut) have been documented with WNS. At several of those sites, significant bat mortality has been observed. The fungus may be a symptom and not the cause of the mortality observed to date. Bats affected with WNS do not always have a grossly visible fungus, but may display abnormal behaviors. These behaviors include bats (primarily little brown bats to date) roosting towards the entrances of caves/mines where the temperatures and humidity are far less stable than traditional roosting sites. Bats are also leaving their hibernacula far too early in the winter/spring in the northeast during cold temperatures before any insects are available for foraging. Many bats still inside hibernacula have not responded to human presence during surveys as healthy, unaffected bats would do. Affected bats appear to be using up their essential fat reserves well before spring emergence and are starving to death.

It is unclear at this point if or how WNS is transmitted. Eastern pipistrelle (*Pipistrellus subflavus*), little brown (*M. lucifugus*), northern long-eared (*M. septentrionalis*), small-footed (*M. liebii*), and Indiana bats have been found with WNS. Big brown bats (*Eptesicus fuscus*) are typically found in lower numbers in the affected sites; only two big brown bats have been found with small white patches of fungus, although it is currently unclear if this was associated with WNS. It is unclear if susceptibility actually varies by species within and among caves or if observed symptoms are expressed differentially by species (see below for further discussion). It

is also unclear how long symptoms take to manifest after exposure to an unidentified agent(s). Finally, it is unclear what the long-term effects to the Indiana bats will be (e.g., geographic spread, mortality within affected sites).

As of April 3, 2008, all surveyed Indiana bat hibernacula in New York, except for Jamesville Quarry Cave and a newly-discovered site in Orange County (Bull Mine), have been documented with WNS. In addition, two Indiana bat hibernacula in Vermont (Aeolus and Skinner Hollow) have been documented with WNS. However, spot checks of several other Indiana bat hibernacula across the range found no signs of WNS in the winter of 2007-2008.

At affected Indiana bat hibernacula, impacts to Indiana bats are inconsistent. The New York State Department of Environmental Conservation (NYSDEC) redid photographic surveys of all New York State Indiana bat hibernacula in March of 2008 to compare with the 2006-2007 counts. At this point, we only have summaries of the survey results. For example, Indiana bat numbers and roosting locations appear normal at Barton Hill and Williams Hotel hibernacula as well (NYSDEC, pers. comm.). However, at Glen Park Cave, while the one cluster of Indiana bats (referred to as the K-cluster) appeared to be normal in location at the end of March 2008, preliminary estimates were 1,200-1,400 bats (Hicks et al. 2008, NYSDEC, pers. comm.). This count is down from the count of 1,932 Indiana bats in 2006-2007. Haile's Cave represents the worst-case scenario for Indiana bats at WNS affected sites. Surveys of Haile's Cave in 2006-2007 found no Indiana bats (living or dead), while every previous survey since 1981 documented their presence (Hicks and Newman 2007). In 2004-2005, 685 Indiana bats were recorded. While this loss was certainly unanticipated, Haile's Cave had already been classified as an ecological trap hibernaculum in the Indiana Bat Draft Recovery Plan (Service 2007) due to the risk of flooding and freezing events at this site. In addition, late winter counts in Williams Preserve and Williams Lake are down by 92-99% when compared to 2006-2007 mid-winter surveys. In 2006-2007, there were approximately 13,014, and 1,003 Indiana bats in the Williams Preserve and Williams Lake, respectively. In April 2008, counts were closer to 124 and 80 Indiana bats (Hicks et al. 2008). It is unclear if some of the Indiana bats may have moved to new hibernacula or whether all should be considered dead. No carcasses were found at these two sites and bats found outside the Williams Hotel cannot account for that large of a drop in counts.

In addition to potential differences in mortality among sites, the NYSDEC has observed differential symptoms of WNS between Indiana bats and little brown bats within sites. Of a total of 1,190 bats counted from clusters containing both species, 5.5% of the Indiana bats and 51% of the little brown bats had obvious signs of facial fungus.

In summary, WNS is currently limited to sites in the northeast, not all hibernacula are affected in affected states, the degree of impact to bats within sites varies, and the observed impacts among bat species varies. Given the information currently available, it is uncertain whether the status of the species overall has significantly changed at this point in time. Winter counts in 2008-2009 will provide valuable insights into geographic spread and effects at which point range-wide, population level impacts and the status of the species can be re-evaluated. Meanwhile the Service, States, and multiple researchers are continuing to try to identify the cause of WNS and determine options for minimizing additional WNS-associated mortalities.

Environmental Baseline

The baseline conditions in relation to the Indiana bat and its habitat within the MNF are fully described in the July 2006 BO on pages 39-40 and 43-47. These descriptions remain current with the following exceptions. Surveys were conducted during the summer of 2006 at the site of the suspected maternity colony in Pendleton County (as described on page 39 of the July 2006 BO). Emergence counts at the previously identified roost tree documented over 30 bats emerging from the tree, however subsequent mist netting in the area suggests that no maternity activity is occurring at the site. Rather these surveys indicate that the tree and area is used by a bachelor colony of male Indiana bats (B. Douglas, C. Stihler, D. Arling, C. Sanders; personal observations).

Additional surveys at the previously documented maternity colony on the MNF in Tucker County were also conducted in the summer of 2006. While the roost trees that were used in the previous years have become unsuitable, habitat reviews indicate that area continues to provide a large number of potentially suitable maternity roost trees. Although numerous male Indiana bats were captured, mist net surveys did not result in the capture of any female Indiana bats. These results indicate that Indiana bats continue to use the areas for roosting and foraging throughout the summer, however it is not known whether a maternity colony still exists in the area.

During the winter of 2007/08 a number of West Virginia hibernacula were surveyed for the potential presence of WNS in conjunction with regularly scheduled population monitoring efforts. Other West Virginia hibernacula were also selected for WNS monitoring based on the probability that the cave had been visited by cavers who had recently visited areas affected by WNS. No evidence of WNS was found during those surveys with the exception of two live bats with small amounts of fungus on the forearms and ears that were found in Trout Cave, Pendleton County, West Virginia. These bats were collected and sent for testing. The results of those tests were inconclusive. Both bats were low in weight, one more than the other. The lab was not able to culture any fungi off of either bat. Both bats had roundworm parasites in their guts. Because no one knows how to define WNS, there is no definitive test the lab can run to see if it is present. These results were discussed by an assembly of biologists and scientists at a recent meeting on WNS in Albany, New York. Based on the absence of other symptoms of WNS such as unusual roosting locations, bats emerging during cold weather, evidence of excessively poor body condition, or the presence of dead bats, it was determined that West Virginia should be considered an unaffected State at this time. All areas currently affected by WNS occur within the Northeast Recovery Unit. All hibernacula within West Virginia occur within the Appalachian Recovery Unit.

Status of the Species within the Action Area

Areas within a 5-mile radius of a known Indiana bat hibernaculum are assumed to be used for fall swarming and roosting behavior. Indiana bats congregate each autumn near hibernation caves to mate and replenish fat reserves before hibernating. Males are known to arrive at hibernacula as early as July. For these reasons, the Service presumes that Indiana bats could be present within these 5-mile radii at any time outside the hibernation period. The Service considers the hibernation period to be from November 15 to March 31. The project area is within a 5-mile radius of three known Indiana bat hibernaculum. Big Springs Cave is located

approximately 0.4 miles away. The most recent winter survey, conducted in 2008, documented 307 Indiana bats using this cave. This represents approximately a 17% increase from the previous survey, and is the highest recorded count to-date. Of the approximately 70,112 acres within the 5-mile radius of Big Springs Cave, 51,370 are MNF lands. Approximately 93.2% of the total area within the 5-mile radius is currently forested lands. Further, 98.6% of the MNF lands within this area are forested.

Two other occasional and small-scale hibernacula, Two Lick Cave and Coal Run Cave are located approximately 3 miles away from the action area. Two Lick Cave was last surveyed in 2004 and one Indiana bat was documented. Coal Run Cave was last surveyed in 1993 and one Indiana bat was documented. Because of the small number of bats present in these two caves and the distance of the project from these caves when compared to Big Springs Cave, this analysis will focus on the impacts to the swarming area of Big Springs Cave.

As described on pages 24 and 29 of the project BE, a number of summer and fall mist net and Indiana bat studies have been conducted in the vicinity of the proposed project. These surveys did not document evidence of any maternity colonies in the area. However, they did document that males foraged and day roosted in the area throughout the summer and fall. Female Indiana bats arrived in mid-August and also use the area for fall swarming.

Effects of the Action

A total of 11.75 acres will be affected by the proposed action. This includes 3.5 acres that were previously cleared during the hibernation period for construction of the B-800 well and access road; 4.65 acres of tree clearing on new ROW (including areas adjacent to FR709); 0.10 acres of disturbance within FR 701; 1.5 acres within the area previously proposed for the B-782 pipeline but that has not yet been cleared, and an additional estimated 2 acres of clearing on private lands. Impacts to private lands are evaluated here as an interrelated effect of the proposed federal action.

Direct Effects

Because of the economic need for Berry Energy to move their product to market as soon as possible in order to recoup the costs of their investments from constructing the B-800 well, it is not practicable for them to wait until the hibernation season to begin clearing trees for project construction. Therefore, a total of 8.15 acres of forested habitat is proposed to be cleared during the non-hibernation period, including 6.15 acres on MNF lands and 2 acres on private lands. All trees cleared will be within the swarming zone of Big Springs Cave. Tree removal during the non-hibernation period (April 1 - November 14) may result in mortality (take) of roosting Indiana bats, if a tree that contains a roosting bat is removed. If a bat using a roost tree that is removed is not killed during the removal, the roosting bat would be forced to find an alternative tree, causing a significant loss of energy that would result in harm or harassment of the individual.

However, a number of conservation measures have been included in the project design to minimize the potential that Indiana bats will be affected by the project. These measures incorporated are more fully described and analyzed on pages 13-15 and 29-35 of the project BA. As described on that document, the MNF has fully implemented the terms and conditions of the

programmatic BO, and the project design is consistent with all Forest Plan standards and guidelines. For example, incorporated measures include conducting an inter-agency site review¹ to evaluate the potential route and identify trees that appeared to have a high potential to serve as roost trees. During this review, the route was altered to avoid an area that contained a number of potential roost trees (trees with crevices, loose bark, fissures) in Compartment 17A near the edge of a recent patch clear cut, and avoid all shagbark hickory trees that were noted. In addition, the route utilizes existing roads (thus minimizing the number of trees cut), and travels along the borders of research compartments that have been subject to management treatments conducted by staff on the Fernow Experimental Forest. These areas have low average DBH trees that are unlikely to serve as roost trees. We therefore conclude that that while there is potential to unknowingly remove an established Indiana bat roost tree during implementation of timber harvest activities, this likelihood will be small, and would be restricted to the removal of single (rather than multiple) lower quality alternate roost trees. This conclusion is consistent with the discussion of effects more fully described on pages 52-53 of the Programmatic BO.

Effects on Habitat Suitability

Anabat surveys conducted by staff at the Fernow Experimental Forest have shown that Indiana bats forage and/or travel along FR709. The project will disturb and widen this area by approximately 15 feet. Disturbance will likely occur during the time bats are expected to be using it. The corridor may become less suitable for foraging and traveling because it will lack of canopy cover and ground vegetation. During project construction and for a period after project construction, bats are likely to avoid this habitat. The project will therefore likely adversely affect foraging patterns. However, the area is likely to regrow canopy cover and ground vegetation relatively quickly (e.g. within one or two growing seasons), so impacts are expected to be temporary. Over the long-term, the pipeline would be maintained as a 15-foot wide mowed, grassy corridor through forested habitat. These types of areas are consistent with those shown to be used by the Indiana bat for foraging/traveling in the project area, so no long-term loss of foraging habitat quality is expected.

Directional boring will be used to cross streams and wetlands within the project area, thereby limiting impacts to other primary foraging habitats. Finally, the total amount of forest clearing for this project will be limited to removing approximately 0.02% of the forested habitat within the swarming zone of Big Springs Cave. After project construction, 93% of the area within the swarming zone will remain forested, therefore overall project effects to habitat suitability are expected to be minimal.

Summary

Because of the small scale of the proposed project, the incorporation of the terms and conditions of the programmatic BO, and the incorporation of site-specific conservation measures, the Service concludes that while there is potential to unknowingly remove an established Indiana bat roost tree during tree clearing activities associated with the project, this likelihood will be small, and would be restricted to the removal of single (rather than multiple) lower quality alternate roost trees. It is also anticipated that overall the project will not result in the long-term or

¹ This site review covered the area from the B-800 access road to the junction with the B-782 pipeline. The portions of the project within the B-800 access road and the B-782 pipeline were not field reviewed because the MNF has previously approved these locations. However, those effects are still analyzed in this Tier 2 BO.

significant reduction of populations of the Indiana bat within the project area or significantly reduce the suitability of the action area for foraging, roosting, or traveling. This determination is consistent with the rationale and conclusions of the programmatic BO, and is more fully described on pages 51-62 of that document.

All proposed effects are similar to those addressed in the programmatic BO and are within the level of take identified in the Incidental Take Statement. If future monitoring conducted on the MNF identifies additional evidence of Indiana bats utilizing the project area in a way that is not described in this Tier 2 BO, the MNF would consult with the Service and the West Virginia Division of Natural Resource to develop further protective measures in accordance with the MNF Forest Plan and the programmatic BO.

Cumulative Effects

The effects of the entire project, including the indirect effects of this federal action that are expected to occur within private lands have been considered in the Effects of Action section above. While there is potential that additional wells and pipelines could be proposed within the area of Berry Energy's mineral rights ownership, the Service currently does not have enough information to determine that this is reasonably certain to occur. The Service is not aware of any additional future State, local, or private actions that could occur within the action area that would not be subject to a section 7 review. Future Federal, State, local and private actions within the action area, will most likely either be carried out by, or will require approval from, the Forest Service. These actions will therefore require a section 7 consultation, and are not considered cumulative effects.

No additional cumulative effects within the action area are expected as a result of WNS. Given the best scientific information available at the time of this analysis, it appears that Indiana bats present within the action area or the within Appalachian Recovery Unit are not currently affected by WNS. Given the short-time frame of project construction (completed by late 2008/early 2009), and the fact that the action area is within a different recovery unit than the one currently known to be affected by WNS, bats within the action area are not expected to be affected by WNS within the life of the project.

Conclusion

The effects associated with the proposed activities for the Berry Energy, Inc B-800 Pipeline Project are consistent with those identified and discussed in the Service's programmatic BO. After reviewing the size and scope of the project, the environmental baseline, the overall status of the Indiana bat, new information on the species, the effects of the action, and the cumulative effects, it is the Service's biological opinion that the proposed action is not likely to jeopardize the continued existence of the Indiana bat because: 1) the project is of a small scale and should not substantially affect the swarming, roosting or foraging habitat for the bat; and 2) no known maternity areas are located in close proximity to the project; and 3) avoidance and minimization measures incorporated into the project have reduced the potential for removing roost trees and associated direct take of bats.

Incidental Take Statement

The Service anticipates that the proposed actions associated with the project area will result in the incidental take of Indiana bat as outlined in Table 1. The incidental take quantified below is associated only with those activities occurring on MNF and does not include incidental take for activities on non-federal lands.

The type and amount of anticipated incidental take is consistent with that described in the programmatic BO and does not cause the total annual level of incidental take (via harm to forested acres) in the programmatic BO to be exceeded. The actual incidental take reported by the MNF has consistently been below the annual levels estimated (exempted) in the programmatic BO, therefore, we do not anticipate that implementation of this project will result in the take levels in the programmatic BO to be exceeded.

Table 1: Authorized incidental take (as measured indirectly by acreage) due to the removal or disturbance of potential Indiana bat habitat on the Monongahela National Forest during calendar year 2008.

Activity	Berry Pipeline Project	Other Projects Authorized during 2008	Total (2008)
Timber Harvest (total)	0	2.43	2.43
Road Construction/Maintenance	0	0	0
Prescribed Burns	0	0	0
Mineral Development	6.15	0	6.15

Please note that as per the terms and conditions of the July 2006 BO, Tier 2 BOs including this one, will track the amount of incidental take authorized. However, incidental take does not actually occur until the time that the project is implemented. Most projects authorized under Tier 2 BOs will not be implemented for a number of years; therefore the MNF must annually report the total amount of incidental take that occurs each year and for each project. This number will be compared to the maximum annual incidental take as authorized in the July 2006 programmatic BO. If it is determined during future project planning or the course of project implementation that either the authorized amount of project specific incidental take as detailed above, or the maximum amount of annual incidental take as detailed in the programmatic BO, may be exceeded, additional consultation with the Service will be required.

Reasonable and Prudent Measures

The MNF must implement all pertinent reasonable and prudent measures (RPMs) and terms and conditions stipulated in the programmatic BO to minimize the impact of the anticipated incidental take of Indiana bats, and to be exempt from the take prohibitions of section 9 of the ESA. The Service has determined that implementing the reasonable and prudent measures specified in the programmatic BO, in conjunction with the project specific avoidance and conservation measures as described in the July 2008 Berry Energy B-800 Natural Gas Pipeline

Mr. Clyde N. Thompson
July 25, 2008

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Project Biological Assessment will appropriately minimize the impact of incidental take anticipated for the proposed activities in this project area. Therefore, the following site-specific RPM will apply:

- The MNF will implement site-specific avoidance and conservation measures as proposed in the July 2008 Berry Energy B-800 Natural Gas Pipeline Project Biological Assessment.

Reinitiation Notice

Incidental take that occurs as a result of this and other projects on the MNF cannot exceed the annual or cumulative incidental take levels established in the programmatic BO. If implementation of any project or projects is anticipated to exceed these take levels, further consultation will be necessary. To ensure that incidental take is not exceeded, annual reports should be provided to this office tabulating the amount of incidental take on projects being implemented and authorized throughout the MNF, as indirectly measured by acres affected. Incidental take that is implemented each year will be compared against the level authorized in the BO to determine whether annual levels have been exceeded. To determine whether take is exceeded at the project level, the level of take implemented will be compared against the level authorized under each Tier 2 BO.

This fulfills your consultation requirements for this action. Should new information reveal 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; or the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or a new species is listed or critical habitat is designated that may be affected by the action; or the amount or extent of take as identified in Table 1 is exceeded, reinitiation of formal consultation as outlined in 50 CFR 402.16 is required.

If you have any questions regarding this letter, please contact Ms. Barbara Douglas of my staff at (304) 636-6586 ext. 19, or at the letterhead address.

Sincerely,

Laura Hill
for Thomas R. Chapman
Field Supervisor

Literature Cited

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Mr. Clyde N. Thompson
July 25, 2008

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cc:

Project File

Reader File

FEF – Mary Beth Adams

ES:WVFO:BDouglas:skd:7/25/2008

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