



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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April 26, 2024

Mr. Eric Reusch
U.S. Army Corps of Engineers
Louisville District
600 Dr. Martin Luther King Jr. Place, Room 183
Louisville, KY 40202

Subject: FWS 2023-0052626; LRL-2017-01046-jwr; Request to Reinitiate Consultation;
LG&E Bullitt County Transmission Pipeline Project, Bullitt County, Kentucky

Dear Mr. Reusch:

This letter acknowledges the U.S. Fish and Wildlife Service (Service) Kentucky Field Office's (KFO) April 3, 2024, receipt of the U.S. Army Corps of Engineers' (Corps) letter requesting reinitiation of section 7 consultation for the above-referenced project. The Corps' correspondence provided effect determinations on federally listed species and designated critical habitat that could be affected by the proposed project. The correspondence also requested reinitiation of informal consultation for the gray bat (*Myotis grisescens*) and designated critical habitat for Kentucky glade cress (*Leavenworthia exigua laciniata*) and formal consultation for the Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and Kentucky glade cress. In addition, the Corps requested initiation of formal conference procedures for the tricolored bat (*Perimyotis subflavus*). A Biological Assessment (BA) dated February 27, 2024, was included with the Corps' consultation request letter. The BA was prepared by Stantec Consulting Services, Inc. on behalf of Louisville Gas & Electric Company (LG&E), the project proponent. The KFO offers the following comments in accordance with the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

Project Description

The Corps is reviewing an application for a Department of the Army (DA) authorization for impacts to waters of the United States (WOTUS) that are necessary for LG&E's construction of an approximately 12-mile natural gas transmission pipeline. The proposed project would be constructed between Grigsby Lane/Rummage Road and Interstate 65 in Bullitt County, Kentucky. The project would require temporary and/or permanent impacts to 35 jurisdictional tributary crossings and 0.5 acre of jurisdictional wetlands. Impacts to the 35 identified crossings within the Corps' jurisdictional area consist of 3,046 linear feet of temporary impacts to intermittent and/or perennial tributaries and 18 linear feet of permanent impacts. In addition,

proposed impacts to identified wetlands within the Corps' jurisdictional area would consist of 0.34 acre of temporary impacts to emergent wetlands and open water aquatic resources and 0.16 acre of permanent impacts to forested wetlands. The proposed federal action would be the Corps' issuance of a DA permit for impacts to WOTUS associated with the construction of the LG&E pipeline.

On April 18, 2022, the Corps received a letter from the KFO recommending the Corps request reinitiation of formal consultation for the proposed project based on new information. A previous Biological Opinion was completed for the project by the KFO on June 9, 2021.

Federally Listed Species & Designated Critical Habitat

Freshwater Mussels

The Corps has determined that the proposed project will have no effect on the clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), orangefoot pimpleback (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), rabbitsfoot (*Quadrula cylindrica cylindrica*), and ring pink (*Obovaria retusa*). There is no statutory requirement to request concurrence with no effect determinations; however, the KFO acknowledges these determinations.

We have no concerns related to the Corps' no effect determinations for these listed mussel species. There are no records of these freshwater mussel species within the project corridor, and ephemeral and intermittent streams are not suitable habitat for these species. In addition, the proposed project would largely avoid potentially suitable habitat in the project corridor associated with Cox Creek and Rocky Run. Direct impacts to these two perennial streams would be avoided by installing the pipeline under the streams using the horizontal directional drilling methods. Also, indirect impacts to these two streams and the other tributaries impacted by the project would be minimized by implementing erosion and sediment control Best Management Practices (BMPs) as required by the Section 404 and 401 permits, Kentucky Pollutant Discharge Elimination System permit, and other local permits. These BMPs would be identified in the Storm Water Pollution Prevention Plan prepared for the proposed project.

In addition, there is no designated critical habitat for these mussel species within the project corridor or in any of the nearby tributary stream systems that could reasonably be indirectly affected by the proposed project; therefore, no designated critical habitat for these species would be affected.

Gray Bat

Gray bats typically roost and hibernate in caves, although the species can also roost in bridges during the summer. The species typically forages on insects over streams during the summer months. Based on current data, the closest known gray bat hibernaculum is located approximately 20 miles from the project corridor, and the closest known summer roost, a gray bat maternity site, is located approximately 14 miles from the project corridor. Two other summer roosts that do not regularly contain gray bats are located between 18 and 20 miles from the proposed project.

To analyze potential effects of the proposed project on the gray bat, the BA provided updated information on the presence and physical characteristics of caves, open-throated sinkholes, and

other karst features within and in close proximity (i.e., to the extent landowner access was permitted) to the project corridor. Based on this information, there are no known caves, sinkholes, or other karst features that could be used as gray bat hibernacula or roosting habitat that would be affected by the proposed project. None of the karst features identified in the BA contain the requisite habitat conditions that the species requires for hibernating or roosting. Hibernating gray bats require a deep or vertical cave or mine that contains large passages or rooms below the lowest entrance that act as cold air traps and have an average temperature of 42 to 52° Fahrenheit (F). Few vertical caves within the range of the gray bat meet these specifications; consequently, 98 percent of the population is estimated to hibernate in only 15 caves. In summer, maternity colonies require caves between 57 and 77° F that provide restricted rooms or domed ceilings capable of trapping the body heat of roosting bats. Caves used by maternity colonies are typically located within one kilometer (rarely more than four kilometers) of a river or reservoir over which the bats forage. In addition, no bridges or culverts that could provide roosting habitat for this species were identified in the project corridor. Based on this information, no impacts to hibernating or roosting gray bats or their hibernacula or roosting habitat are anticipated to occur as a result of the proposed project.

The BA identifies two perennial streams in the project corridor, Cox Creek and Rocky Run, that provide potentially suitable foraging habitat for the gray bat. Gray bats have not been documented within the project corridor, but gray bats have been documented traveling up to 25 miles from their roosts to forage each night, which is the maximum distance the KFO uses to evaluate potential gray bat foraging effects. As a result, the potential exists for gray bats from (a) the known gray bat roost located approximately 14 miles from the project, (b) the two aforementioned caves within the 25-mile foraging distance, and (c) any unknown bridge or cave roost within the 25-mile foraging distance to utilize potential foraging habitat within the project corridor. Direct impacts to Cox Creek and Rocky Run will be avoided during pipeline installation by using horizontal directional drilling to bore under these two streams. Additionally, the required and proposed erosion and sediment control BMPs will be installed and will minimize potential indirect impacts to these streams and the other tributaries affected by construction of the proposed project. These BMPs will minimize potential impacts to drinking water for gray bats, reduce the likelihood that aquatic insect (i.e., gray bat forage) population abundance or distribution will decline or be significantly affected, and minimize the likelihood that aquatic insect habitat will be degraded.

Tree clearing will be required along Cox Creek and Rocky Run, which may affect potential gray bat foraging habitat found along those streams. A maximum of 50 feet of clearing would occur along each streambank at each stream crossing. The clearing adjacent to these two streams would result in a relatively small gap in the forested riparian habitat at each stream crossing and would remove 1.275 acres of forest habitat. Aerial imagery shows that other small gaps, and some larger gaps, are present along these and other nearby streams. Also, large, continuous forest blocks are present along both sides of Cox Creek and Rocky Run that will remain and will provide forested commuting routes to the streams. Additionally, tree removal in other locations within the project corridor may affect commuting habitat for the species. Gray bats typically use forest blocks, stream and forested corridors, and forest edges to travel between their roosts and foraging areas. However, due to the linear nature of the project, tree removal in potential gray bat commuting habitat would be limited to small segments of existing forested corridors and the

removal of narrow strips within or along the edge of larger forest blocks. These removal areas would also be interspersed within the 12-mile project corridor and not densely aggregated in a particular area. We have no data that would suggest that this limited and dispersed amount of tree removal, which totals 39.46 acres, would have any significant adverse effects on gray bats.

Based on the lack of suitable hibernacula and roosting habitat in the project corridor and the lack of significant effects on the species from potential foraging and commuting habitat alteration or removal, the KFO concurs with the Corps' determination that the proposed project may affect but is not likely to adversely affect the gray bat. In addition, no critical habitat has been designated for the gray bat; therefore, none will be affected.

Designated Critical Habitat for Kentucky Glade Cress

LG&E modified the project alignment to avoid designated critical habitat (DCH) for Kentucky glade cress; however, the maximum disturbance limits (MDL) for the project border two DCH subunits, including Subunit 4F for approximately 575 feet and Subunit 4G for approximately 900 feet. The other nearby DCH units and subunits (subunits 4A, 4B, 4C, 4D, 4E, 4H, 5A, and 5B, and unit 6) are disjunct from the proposed project and have substantial vegetative buffers between their boundaries and the MDL, thus eliminating the likelihood of direct effects and the likelihood that the proposed project will result in indirect effects. However, to minimize the potential for indirect impacts to DCH subunits 4F and 4G, such as sediment runoff from the MDL during rainfall events, LG&E will incorporate the following measures:

1. LG&E will implement and maintain stringent sediment and erosion control measures and BMPs during construction of the proposed project, which will include installing silt fencing between the MDL and DCH subunits 4F and 4G. The silt fencing would also be used to identify the boundaries of DCH subunits for contractors working in these areas, which will reduce or eliminate the risk of an inadvertent intrusion into subunits 4F and 4G by contractors or their equipment.
2. After construction, LG&E will grade and restore the MDL to approximate preconstruction contours, which will minimize the potential for sediment transport into subunits 4F and 4G and other areas outside the MDL.
3. In an April 25, 2024, email to the KFO, LG&E agreed to modify the revegetation plans contained in the BA related to the portions of the MDL adjacent to subunits 4F and 4G. LG&E will plant a native and non-invasive species seed mix approved by the KFO in these two areas, including (a) the portion of the MDL where the MDL and DCH share a boundary and (b) designated distances (i.e., buffer areas) past the points where the MDL diverges from the DCH boundary. This conservation action will reduce the potential that aggressive or non-native invasive species will invade DCH, compete with Kentucky glade cress, or degrade the DCH.
4. LG&E will not use any fertilizer at these locations that could run-off into subunits 4F or 4G or alter habitat conditions within DCH.

The KFO concurs that the proposed project may affect but is not likely to result in the destruction or adverse modification of DCH for Kentucky glade cress based on (a) the lack of direct impacts to DCH associated with DCH units 4, 5, and 6, and (b) the avoidance and minimization of potential indirect impacts to the Primary Constituent Elements (PCEs) (79 FR

25689) of the DCH that will be achieved through implementation of the four measures listed above. The PCEs are: (1) Cedar glades and glade-like areas within the range of Kentucky glade cress that include: (a) Areas of rock outcrop, gravel, flagstone of Silurian dolomite or dolomitic limestone, and/or shallow (1 to 5 cm (0.393 to 1.97 in)), calcareous soils; (b) Intact cyclic hydrologic regime involving saturation and/or inundation of the area in winter and early spring, then drying quickly in the summer; (c) Full or nearly full sunlight; and (d) An undisturbed seed bank. (2) Vegetated land around glades and glade-like areas that extends up and down slope and ends at natural (e.g., stream, topographic contours) or manmade breaks (e.g., roads). The avoidance and minimization measures will ensure that significant impacts to DCH will not occur and that the PCEs associated with DCH will be maintained.

Indiana Bat, Northern Long-eared Bat, and Kentucky Glade Cress

All information required of the Corps to initiate formal consultation on the Indiana bat, northern long-eared bat, and Kentucky glade cress is either included in the BA or is otherwise accessible for the KFO's consideration and reference. Based on the information provided, the KFO concurs with the Corps' determination that the proposed project may affect, is likely to adversely affect the Indiana bat, northern long-eared bat, and Kentucky glade cress and that it is appropriate to initiate formal section 7 consultation for this project. FWS #2023-0052626 has been assigned to this consultation. Please refer to this number in future correspondence for this consultation.

Section 7 regulations allow the Service up to 90 calendar days to conclude formal consultation with your agency and an additional 45 calendar days to prepare our biological opinion (unless we mutually agree to an extension). The KFO will provide the Corps with our biological opinion no later than August 16, 2024. Per the Corps' request, this biological opinion will follow the Small Federal Handle process outlined in the Service letter *FWS/AES/065732*, dated May 22, 2017, and agreed upon by the Corps in a letter dated October 2, 2017.

Proposed Species

The Corps has also determined that the proposed project has the potential to affect the tricolored bat, which is a species that has been proposed for listing as endangered, and has requested a conference opinion for this species.

Tricolored Bat

All information required of the Corps to initiate formal conference on the tricolored bat is included in the BA or is otherwise available for the KFO's consideration and reference. Section 7 regulations provide no specific schedule for conferences; however, by policy, formal conferences follow the same timeframes as formal consultation. Therefore, the KFO will provide the Corps with our conference opinion in conjunction with the above-referenced biological opinion no later than August 16, 2024.

CONCLUSION

The Corps has determined that the proposed project will have no effect on the clubshell, fanshell, orangefoot pimpleback, pink mucket, rabbitsfoot, and ring pink. The KFO concurs that the proposed project may affect but is not likely to adversely affect the gray bat and is not likely to result in the destruction or adverse modification of DCH for Kentucky glade cress. The KFO also concurs that the proposed project may affect and is likely to adversely affect the Indiana bat,

northern long-eared bat, and Kentucky glade cress and agrees to initiate formal consultation on these species. The KFO also agrees to initiate formal conference on the tricolored bat, which may be affected by the proposed project.

As a reminder, the ESA requires that after initiation of formal consultation, the Federal action agency may not make any irreversible or irretrievable commitment of resources that limits future options. This practice ensures that agency actions do not preclude the formulation or implementation of reasonable and prudent alternatives that avoid jeopardizing the continued existence of endangered or threatened species or destroying or modifying designated critical habitats.

Thank you for your request and we look forward to working with you on this consultation. If you have any questions or concerns, please contact Seth Bishop of my staff at (502) 695-0468 or seth_bishop@fws.gov.

Sincerely,

**VIRGIL
ANDREWS**

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Virgil Lee Andrews, Jr.
Field Supervisor