

Intra-Service Section 7 Biological Evaluation Form - Region 7

Originating Person: Tomas Kamienski

Date Submitted: 6/30/2021

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- I. **Service Program and Geographic Area or Station Name:** Migratory Bird Management Program, Lakewood, CO
- II. **Flexible Funding Program** (e.g. Joint Venture, etc.) if applicable:
- III. **Location:** The High Plains McFadden Ridge (Project), a 157.25 megawatt (MW) wind farm, is located in Carbon and Albany Counties, Wyoming, approximately two miles (three kilometers) east of McFadden, Wyoming. Legal location: T 19N, R 77W, Sections 1, 3, 4, 5, 6, 7, 9., T 20 N R 76W, Section 30., T 20N R 77 W, Sections 24-28, 32-36,.
- IV. **Species/Critical Habitat:** Five species listed as federally endangered or threatened under the Endangered Species Act (ESA) may occur in the Project Area or have potential to be affected by the proposed action. These species include the Ute ladies'-tresses (*Spiranthes diluvialis*), and four Platte river species: piping plover (*Charadrius melodus*), whooping crane (*Grus americana*), pallid sturgeon (*Scaphirhynchus albus*), and western prairie fringed orchid (*Platanthera praeclara*).
- V. **Project Description:** The Project encompasses 7,500 acres of leased private-fee and State of Wyoming owned lands. This land ranges in elevation from approximately 7,000 to 7,200 feet (2,133 to 2,195 meters) above mean sea level. The initial Project development consisted of 85 General Electric 1.5 megawatt (MW) wind turbine generators, all with a tower height of 262 foot (80 meter) 157.25 MW. In addition to the wind turbine generators, other Project facilities include two permanent metrological (MET) and two substations. The MET towers are unguyed, lattice structures approximately 260-ft (80-m) tall. Two substations were constructed for the Project which transform energy delivered by the 29.3 mi (47.2 km) of underground collection lines from 34.5 kilovolt (kV) to 230 kV. An approximately 10-mi (16-km) overhead transmission line (230 kV), which was built across private fee lands, interconnects the Project with the existing Foote Creek Substation. All above ground lines currently meet the Avian Power Line Interaction Committee (APLIC) 2006 standards. One Operations and Maintenance (O&M) building was constructed for the Project. The Project includes approximately 30 miles of new access roads. New roads were approximately 40-ft (12-m) wide during construction and were narrowed to approximately 10-feet (3-meter) wide during operation.

The Project and other PacifiCorp wind energy projects in Wyoming resulted in continuing collision mortality of eagles. Consequently on December 19, 2014, PacifiCorp pleaded guilty, in US District Court, to two counts of Unlawful Take of Migratory Birds. Resulting from this were fines, restitution, and community service in form of a probationary period with Mandatory Conditions of Probation. The conditions included the implementation of a Migratory Bird Compliance Plan (MBCP) which was developed with assistance from the U.S. Fish and Wildlife Service (Service). The purpose of the MBCP is to outline a

framework for implementation of avoidance and minimization measures to ensure compliance under requirements of Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA). Pursuant to the MBCP, the Service and Pacific-Corp worked together on additional avoidance and minimization measures and a second phase of standardized post-construction, eagle-mortality monitoring from 2014 and continuing until eagle take permit issuance. The MBCP will remain in place until it's replaced by the Incidental Eagle Take Permit (IETP) aka Programmatic Take Permit. The operator submitted the permit application and Eagle Conservation Plan (ECP) to the Service on October 29, 2018, requesting a 30-year permit.

The need for the federal action is necessitated by the Service Region 7, receiving an application from PacifiCorp for an incidental take permit for the take of bald or golden eagles associated with the existing Project.

VI. **Determination of Effects:**

(A) Description of Effects:

Ute ladies' tresses

No critical habitat has been designated for Ute-ladies'-tresses throughout its range. The Project overlaps the Area of Influence (AOI) defined for this species. The AOI identifies areas where proponents of project action should consider potential effects to the species and designated and proposed critical habitat. The AOI typically encompass areas larger than where the species is expected to occur because of consideration for direct and indirect effects to the species and habitat.

No ground disturbing activities are being proposed. The IETP (if issued) will require post-construction surveys as a condition of the authorization. Post-construction surveys would be conducted on foot, utilizing existing roads for access. Typically post-construction surveys are conducted in a square plot measuring 160 meters by 160 meters (based on a recently issued permit) centered around each turbine. Although the specifics of the survey protocol is unknown, established protocols for wind projects in Wyoming usually prescribe straight-line transects across the square plot so that the surveyor can visually search for eagles 20 meters on either side of the straight-line transect.

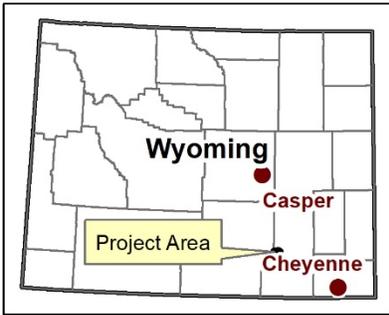
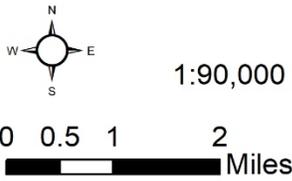
The nearest known population of Ute ladies'-tresses is approximately 70 miles from the Project. The Project occurs within the Ute ladies'-tresses range; however, the Project footprint is located approximately 1,500 feet (457 meters) higher in elevation than any documented population in Wyoming. One potential wind turbine-related plot survey area is located in the Ute ladies'-tresses AOI (Figure. 1). Based on National Wetland Inventory dataset (accessed 2/27/2020), one potential turbine survey area could occur within 160 meters of "freshwater emergent wetland" (wetland) with habitat potentially suitable for Ute ladies'-tresses. No potential wind turbine survey plots are located in both AOI and wetland or riparian habitat.

High Plains McFadden Ridge Wind Project Intra-Service Section-7 Biological Evaluation

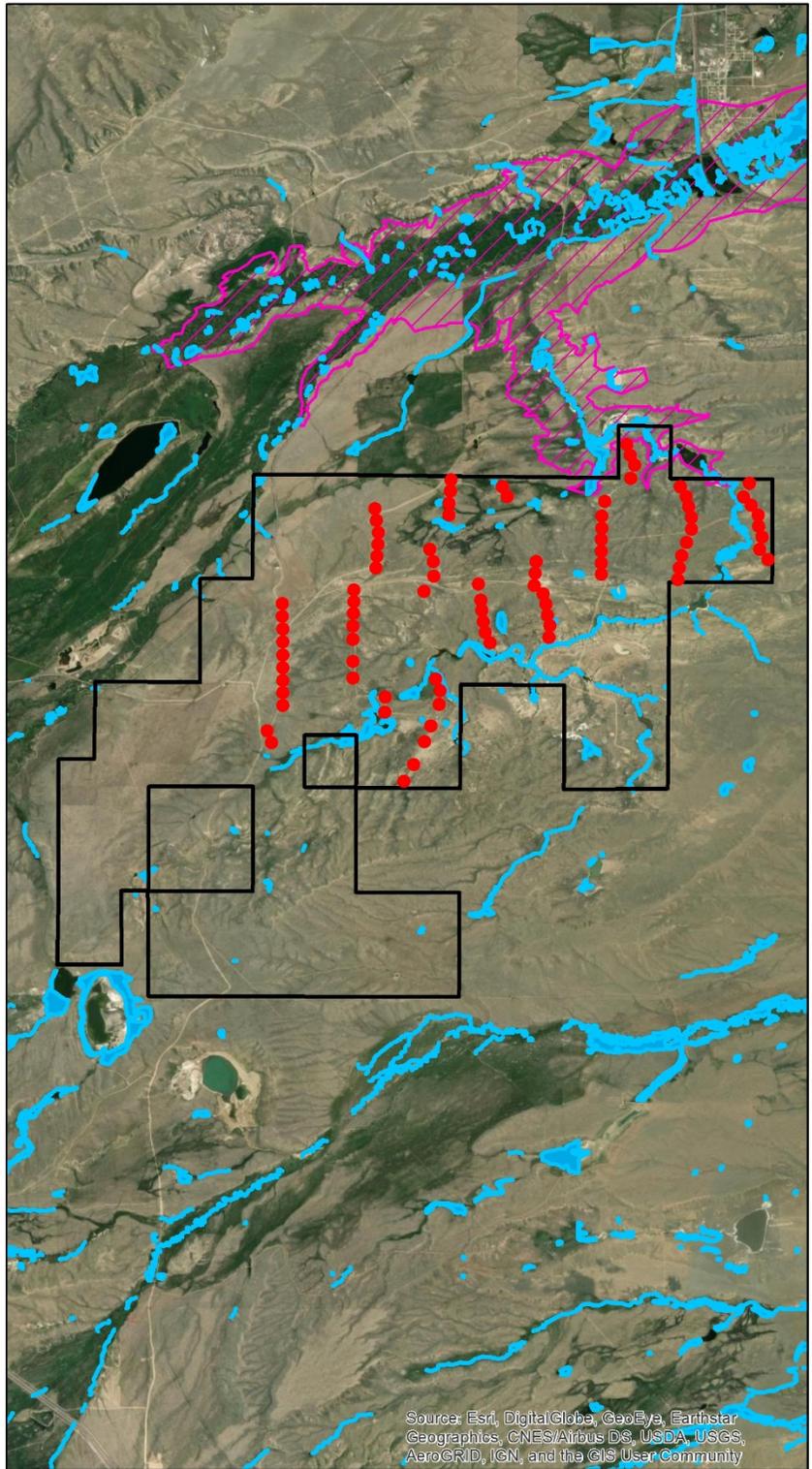


Legend

- Turbines
 - ▭ Project Area
 - ▨ Ute ladies'-tresses AOI
- Feature Type
- Freshwater Emergent Wetland



Coordinate System: UTM NAD 1983 Zone 13
 Author: T.K
 Date Created: 6/22/2021



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Figure 1. High Plains McFadden Ridge Wind Energy Project existing turbines and Ute ladies'-tresses Area of Influence

In summary, no ground-disturbing activities are planned as part of the proposed action of

issuing an IETP for the Project. Foot surveys to monitor eagle mortality may be required by the IETP but no foot traffic will occur in suitable Ute Ladies'-tresses habitat. Therefore the proposed action of issuing an IETP for the existing High Plains McFadden Ridge will have no effect on Ute ladies'-tresses.

Piping plover, whooping crane, pallid sturgeon, and western prairie fringed orchid

There will be no effect to the downstream Platte River species: piping plover, whooping crane, western prairie fringed orchid, and pallid sturgeon because the proposed action of issuing an eagle take permit for the Project will not result in depletions to the Platte River system.

(B) Determination: Determine the anticipated effects of the proposed project on species and critical habitats listed in item IV. Check all applicable boxes and list the species (or attach a list) associated with each determination.

Determination

No Effect: This determination is appropriate when the proposed project will not directly or indirectly affect (neither negatively nor beneficially) individuals of listed/proposed/candidate species or designated/proposed critical habitat of such species. **No concurrence from ESFO required.**
Ute ladies' tresses and Platte River species: piping plover, western prairie fringed orchid, whooping crane, and pallid sturgeon

XX

May Affect but Not Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to cause insignificant, discountable, or wholly beneficial effects to individuals of listed species and/or designated critical habitat. **Concurrence from ESFO required.**

May Affect and Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to adversely impact individuals of listed species and/or designated critical habitat. **Formal consultation with ESFO required.**

May Affect and Likely to Adversely Affect but the proposed action is for the purpose of endangered or threatened species recovery and falls under Region 6's Programmatic Consultation on Service-initiated Recovery Actions: This determination is appropriate when adverse effects are likely but the project is designed to assist with recovery of listed species and/or designated critical habitat. **Concurrence from the ESFO that the project is covered by the programmatic consultation is required.**

May affect but Not Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project may affect, but is not expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Concurrence from ESFO optional.**

Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project is reasonably expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. **Conferencing with ESFO required.**

Signature _____
 [Supervisor at originating station]

Date 1 July 2021

Reviewing Ecological Services Office Evaluation (check all that apply):

A. **Concurrence** _____
Explanation for concurrence:

Nonconcurrence _____

B. Formal consultation required _____
List species or critical habitat unit

C. Effects are addressed in the Programmatic Consultation on R6's
Recovery Program – no further consultation needed _____

D. Conference required _____
List species or critical habitat unit

Name of Reviewing ES Office _____

Signature

Date
