

2 PURPOSE AND NEED FOR FEDERAL ACTION AND DEIS

This DEIS evaluates BRE's application for an ITP for its underlying Project, the intent of which is to produce up to 186 MW of electricity while complying with the ESA. In its HCP, BRE expressed a goal to maximize energy production using wind power to advance renewable energy objectives and economic opportunities in the local area, while at the same time minimizing impacts to wildlife. The HCP also states implementing renewable energy will produce fewer emissions of greenhouse gases and other air pollutants than traditional sources of energy production, and will help in meeting state energy policies and goals; e.g., West Virginia's Alternative Renewable Energy Portfolio Act (House Bill 103).

2.1 Action Agency Purpose and Need

It is the Service's purpose and need for action that determines the range of alternatives and provides a basis for the selection of an alternative in a decision.

The federal action triggering NEPA is the Service's receipt from BRE of an ITP application under the ESA. The underlying issue to which the agency is responding is a need for BRE to comply with the ESA by either avoiding take of an ESA-listed species (in which case an ITP is not needed) or to acquire a permit that authorizes take of listed species under the ESA. BRE has chosen to apply for an ITP and the Service needs to respond to the permit application.

The proposed HCP and ITP are necessitated because take of the Indiana bat and Virginia big-eared bat is reasonably anticipated during Project operations. An ITP is required to legally take listed species incidental to these otherwise lawful activities. Consistent with the requirements of the ESA, BRE commits to a range of conservation measures proposed to minimize and mitigate the effects of take of these two listed bats. Thus, the HCP, if approved, and the ITP, if issued, are designed to avoid and minimize take of these two species in the course of carrying out the proposed covered activities, but also to authorize the limited, unavoidable take that may occur, as well as to mitigate the impact of such take.

The Service's purpose is to ensure ESA compliance for this Project by either avoiding take of listed species or legally authorizing the incidental take of the Indiana and Virginia big-eared bats consistent with ESA permit issuance criteria contained in section 10(a)(1)(B) of the ESA and the associated implementing regulations [50 CFR 17.22(b)(2) and 17.32(b)(2)]:

- (i) the taking will be incidental;
- (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- (iii) The applicant will ensure that adequate funding for the conservation plan and procedures to deal with changed circumstances will be provided;
- (iv) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
- (v) the measures, if any, required by the Service as being necessary or appropriate, will be provided; and
- (vi) the Service has received such other assurances as may be required that the plan will be implemented.

The goal or objective the Service is trying to achieve within the context of this permit application is to conserve the Indiana bat and Virginia big-eared bat and their habitats in the Project area and region for the continuing benefit of the people of the United States.

2.2 Decisions to be Made

The Service must decide whether to issue or deny the permit. If the permit issuance criteria contained in section 10(a)(1)(B) of the ESA are satisfied, the Service is required to issue the permit to the Applicant. Within these guidelines the Service may decide to issue a permit conditioned upon implementation of the HCP as submitted by the applicant, or to issue a permit conditioned upon implementation of the HCP as

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submitted together with other measures specified by the Service. If the ESA's criteria are not satisfied, the Service is required to deny the permit request. Thus the Service has limited discretion and authority within which to determine the range of alternatives.