



United States Department of the Interior

Fish and Wildlife Service



Bloomington Field Office (ES)
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December 9, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance
888 First Street, NE
Washington, DC 20426

Dear Ms. Bose:

The U.S. Fish and Wildlife Service, Bloomington Field Office (Service) has reviewed the Final Environmental Assessment (EA) prepared by staff of the Federal Energy Regulatory Commission (FERC) dated 10 November 2016 and FERC's request for concurrence letter also dated 10 November 2016. We received that correspondence on 14 November 2016. It requests that the Service concur with FERC's finding of no significant impact (FONSI) in the Final EA, which we interpret as a request for formal consultation within 135 days.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, and the Endangered Species Act of 1973, as amended. This endangered Species information is provided for technical assistance only, and does not fulfill FERC's Compliance with the provisions of section 7 of the Endangered Species Act.

This letter serves to notify FERC that the Service does not concur with FERC's not likely to adversely affect determination for the endangered clubshell, rayed bean, sheepsnose, snuffbox, and fanshell mussels, and the threatened rabbitsfoot mussel, including its designated critical habitat. The Service does not concur with the conclusion of Finding of No Significant Impact (FONSI) in the EA. Because of key deficiencies in the EA as a biological assessment (BA), as documented below, the Service cannot initiate formal consultation at this time.

The Service refers FERC to the *Final ESA Section 7 Consultation Handbook, March 1998* (Chapter 1 at <https://www.fws.gov/endangered/esa-library/pdf/CHI-3.PDF>), which states:

The Act requires the action agency to provide the best scientific and commercial data available concerning the impact of the proposed project on listed species or designated critical habitat.

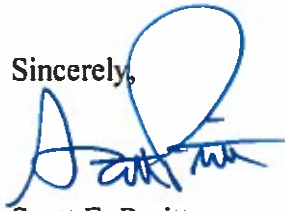
Where significant data gaps exist there are two options: (1) if the action agency concurs, extend the due date of the biological opinion until sufficient information is developed for a more complete analysis; or (2) develop the biological opinion with the available information giving the benefit of the doubt to the species.

The following is a preliminary list of data gaps identified by the Service:

- The EA does not estimate take, which in and of itself makes it problematic as a BA.
- Critical habitat has been designated for the rabbitsfoot mussel throughout the 18 miles downstream of Oakdale Dam. There is no discussion how the proposed operating procedures constitute an effect on critical habitat.
- The Service has demonstrated and NIPSCO has stated in meetings and in writing that it cannot both maintain lake levels within the existing requirements and maintain stable flow downstream (natural flow). The BA therefore must discuss how the frequency, quantity, and durations of flow downstream will be disrupted (or vary from the natural flow) to maintain stable lake levels.
- Maintaining stable lake levels also necessitates increased flow (i.e., dumping water to maintain lake level during high flows). The BA must discuss how this affects the listed mussels at various times of the year, especially its potential effects on mussel reproduction during the spring, summer, and autumn.
- The Service has documented that there are vulnerable habitats within the 18 miles of the Tippecanoe River downstream of Oakdale Dam. The Service has also documented that the rabbitsfoot is a shallow habitat specialist and that other listed species frequently use shallow habitats within the Tippecanoe. Bathymetric data showing the amount (number and size) of these vulnerable habitats in the affected area is necessary to develop a reasonable estimate of the take (including harm and mortality).
- Data from the systematic, quantitative sampling of mussels throughout the 18 mile reach is needed to establish the likely impact of the proposed operating procedures on the mussel populations.

Please respond to this letter and inform the Service whether or not FERC will prepare a separate BA (or revise the EA) to address its deficiencies. Formal consultation cannot be initiated until FERC has addressed these deficiencies.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott E. Pruitt", with a large loop at the top and a horizontal line at the bottom.

Scott E. Pruitt
Field Supervisor

cc: Bob Krska, RO
Jeff Gosse, RO
Matt Buffington, IDNR

