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STATE OF NEW MEXICO

DEPARTMENT OF GAME & FISH

One Wildlife Way
Post Office Box 25112
Santa Fe, NM 87504
Phone: (505) 476-8008
Fax: (505) 476-8128

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November 21, 2005

0028

Ms. Julia Souder
U.S. Department of Energy
Office of Electricity Delivery and Energy Reliability
1000 Independence Avenue SW
Washington, D.C. 20585

Re: Notice of Intent to Prepare a Programmatic Environmental Impact Statement, Amend Relevant Agency Land Use Plans for Designation of West-wide Energy Transmission Corridors
NMGF Doc. No. 10380

Dear Ms. Souder:

The New Mexico Department of Game and Fish (Department) has reviewed the 28 September 2005 Federal Register Notice of Intent for preparation of the West-wide Energy Corridor Programmatic Environmental Impact Statement (PEIS). As stated in an informational background paper, for the purposes of preparing the PEIS, an energy corridor is defined as a parcel of land (often linear in character) that has been identified through the land use planning process as being in a preferred location for existing and future utility right-of-ways, and that is suitable to accommodate one or more right-of-ways which are similar, identical or compatible. Energy corridors may accommodate multiple pipelines (such as for oil, gas, or hydrogen), electricity transmission lines, and related infrastructure, such as access and maintenance roads, compressors, pumping stations, and other structures. According to this background information, some of the benefits of this effort will include:

- Streamlining and expediting the processing of energy-related permits and projects;
- Reducing duplicative assessments of generic environmental impacts by focusing further impact assessment on site-specific environmental studies to determine route suitability and appropriate mitigation; and
- Ensuring needed inter-agency coordination as part of the application process.

The Federal Register announcement states "The scoping process will afford other stakeholders such as environmental groups, counties, states, Native American tribes, and interested citizens an opportunity to **propose** [emphasis ours] new corridors." However, it is not clear that Department

and other potentially-affected state agencies and public entities interested in public land management will have a meaningful opportunity *to comment on and influence the location of* these (as of yet to be proposed) energy corridors.

Department personnel attended the 26 October 2005 scoping hearing in Albuquerque for the development of the Programmatic EIS and implementation of this proposed project. At the time of the hearing, no actual proposals had been made for energy corridors for the public to consider, and none were proposed or presented at the scoping hearing. We were advised at the hearing that 1) commenting on the PEIS will be the only opportunity to review and comment on the actual corridor proposals after they have been developed by the BLM, DOE and project proponents; and 2) commenting on the PEIS will not likely afford the opportunity to modify the proposed corridors, should concerns by state agencies or the public exist. Apparently no draft PEIS is being considered, which would allow the public a meaningful opportunity to review and have substantive input into the location of the proposed corridors.

We were also advised at the public hearing that the Record of Decision for the PEIS, once issued, would automatically amend BLM Resource Management Plans and U.S. Forest Service Forest Plans to incorporate the energy corridors. This appears to again exclude potentially affected state agencies and public entities from an opportunity to have substantive and meaningful input into the process, and would appear to be contrary to the spirit and intent of laws such as the National Environmental Policy Act (NEPA), Federal Land Policy and Management Act (FLPMA), and National Forest Management Act (NFMA), which provide the public with meaningful opportunities to be involved in the decision-making process for federal public lands.

When we asked at the hearing how the Department could have meaningful input into the location of energy corridors on federal lands, we were advised to develop recommendations where energy corridors would or would not be appropriate. An example was given whereby supporters of federally-designated Wilderness Areas requested at a previous public hearing that energy corridors not be constructed through designated Wilderness Areas. However, we believe that it is not reasonable to expect non-project proponent state agencies and the public to define where energy corridors should or should not occur in specific terms.

Important wildlife populations, habitats and movement corridors occur throughout New Mexico. Existing energy corridors occur throughout New Mexico as well, and some, such as electrical powerlines, may be having significant impacts on wildlife populations, such as raptors, by electrocution or collision. During the development phase of proposed energy corridors, actual project proponents such as power and energy companies have much specialized information that would need to be considered, such as locations for future needs for power, future potential oil and natural gas fields, existing pipelines and power lines, etc., which will define where project proponents will recommend locations for energy corridors.

Because of the complexity of defining important wildlife populations and habitats in New Mexico that change spatially and temporally, and the lack of specialized information on energy needs and existing facilities, the Department will not be able to provide in our scoping comments site-specific recommendations of where new energy corridors should or shouldn't be developed. We can and will provide a general, generic description of locations that would be inappropriate. However, to

provide an in-depth and thorough assessment of the potential impacts of proposed or existing energy corridors on important wildlife and habitat resources, the Department requires a realistic opportunity to review proposed energy corridors for potential impacts before these corridors are integrated into PEIS alternatives and ultimately incorporated into the relevant land management plans.

We were advised at the public meeting that no interdisciplinary team meetings or additional public input meetings were being considered for New Mexico that would allow the Department an opportunity to comment on individual corridor proposals. However, we were advised to request a meeting with the planning team during the "refining process" to possibly be able to review proposed energy corridors before release of the PEIS. Therefore, we formally request that the BLM/DOE planning team schedule either additional public meetings or a private meeting in New Mexico with the Department once proposals for energy corridors have been accepted for consideration during the development of the PEIS alternatives, but before release of the PEIS.

Generic features that energy corridors should avoid include state and federal wildlife refuges, wildlife management areas, state and national parks, monuments and recreation areas, specially-designated wildlife management areas, officially-designated critical habitat for federally-listed species, officially-designated Wilderness and Wilderness Study Areas, BLM Areas of Critical Environmental Concern, Inventoried Roadless Areas over 5,000 acres, major neotropical migrant bird migration flyways, seasonal migratory corridors for large game animals such as elk, deer and pronghorn, and rare and critically important habitat areas in New Mexico such as wetlands, playas, riparian areas, and big game critical winter and breeding areas. It will obviously not be possible to avoid all of these important wildlife features, but with consultation with the Department and U.S. Fish and Wildlife Service, mitigation (e.g., seasonal timing restrictions) can be proposed for specific project proposals within designated corridors to alleviate potential impacts. However, without a meaningful opportunity for the Department to consider and comment on where these corridors are anticipated to be located during the "front-end" period of the planning process, we anticipate some situations where energy corridors may be proposed in areas too sensitive for effective mitigation to be implemented at the project level.

Best management practices for all energy corridors in New Mexico should include the Department's Trenching and Powerline guidelines to minimize direct take of wildlife, including state- and federally-protected raptors and threatened and endangered species. We have included a copy of these guidelines for your review, and they are available on the Department's website at http://wildlife.state.nm.us/conservation/habitat_handbook/index.htm.

In closing, based on our understanding of the spirit and intent of NEPA, NFMA and FLPMA, the Department and other public entities in New Mexico should be afforded the opportunity to review and provide meaningful input on the proposed locations of energy corridors pre-decisionally, and yet **after** these proposals are made by project proponents, and we formally request an opportunity to meet with the planning team to do so. Ideally, recommendations of non-project proponents should be incorporated during the development of alternatives.

We appreciate the opportunity to comment on this project. Should you have any questions regarding our comments, please contact Mark Watson, Habitat Specialist, of my staff at (505) 476-8115, or <mwatson@state.nm.us>.

Sincerely,



Lisa Kirkpatrick, Chief
Conservation Services Division

LK/MLW

Attch (1): Trenching and Powerline Guidelines

CC: Ecological Services Field Supervisor, USFWS
U.S. Bureau of Land Management New Mexico Area Office Supervisors
U.S. Forest Service Region 3 New Mexico National Forest Supervisors
Paul Sawyer (Biologist, BLM NM State Office, Santa Fe)
Wally Murphy (USFS TES Program Leader, Region 3 Office, Albuquerque)
Tod Stevenson (Deputy Director, NMGF)
Area Supervisors (NMGF)
Area Habitat Specialist (NMGF)
Mark Watson (Conservation Services Habitat Specialist, NMGF)

POWERLINE PROJECT GUIDELINES

NEW MEXICO DEPARTMENT OF GAME AND FISH

Updated July 2004

- 1) TRANSMISSION LINE STRUCTURAL DESIGN All hawks, owls and vultures are protected under New Mexico state law (New Mexico Statutes Annotated, 1978, 17-2-14, as amended). Bald and golden eagles are protected under federal law. Transmission lines must be designed to prevent or minimize risk of electrocution of raptors. A variety of alternatives were set forth in Olendorff et al. 1981 in *Suggested Practice for Raptor Protection on Power Lines: The State of the Art in 1981* (Raptor Research Report No.4, Raptor Research Foundation, Inc., St. Paul, Minnesota, 111 pages). This report was updated by the Avian Power Line Interaction Committee in 1996 as *Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996* (Edison Electric Institute/Raptor Research Foundation, Washington, D.C.). A Copy of this report may be purchased from Edison Electric Institute at http://www.eei.org/products_and_services/descriptions_and_access/suggested_pract.htm
- 2) LOCATION Existing roads, trails, and rights-of-way should be followed where possible. Roads and rights-of-way should avoid critical wildlife habitat, saddles, ridge tops, riparian, meadows and edges of meadows, and big game migration routes. Construction using helicopters should be considered in remote critical wildlife areas where construction of new roads would otherwise be necessary.
- 3) CLEARING Rights-of-way clearing should be selective, leaving shrubs and brush undisturbed where possible. Clearing should be avoided in riparian areas and on steep slopes. Brush and limbs should be piled at intervals to enhance wildlife habitat.
- 4) STRUCTURES Bridges and culverts should be designed such that fish passage is not impeded, and hydrology and stream course should remain unchanged. Special techniques and structures should be employed as necessary to minimize erosion and sedimentation to riparian areas (e.g., catch basins, raised culverts for roads runoff, water bars).
- 5) CLOSURES Roads and rights-of-way which provide access to critical wildlife area should be designed for easy and effective closure. Gates should be installed at onset of construction and closed immediately after completion of the project. Temporary roads should be obliterated and revegetated immediately after construction.

- 6) SCHEDULING Winter construction is preferred on critical big game summer range. Summer construction is preferred on big game winter range. No construction should be conducted in winter range from December 15-April 15. No construction should occur in elk calving areas from May 1-June 30. No construction should occur in deer fawning areas from June 1-August 31 (northern New Mexico) or July 1-September 31 (southern New Mexico). No construction should occur in turkey nesting areas from April 15-June 30. Construction in big game migration areas should be restricted during migration.
- 7) SPECIAL CONSIDERATION FEATURES (Areas such as seeps, springs, wet meadows, marshes, wallows, salt licks and water development areas). Protect these features from damage during construction. No roads within 200' of feature. Remove debris from wildlife trails. Protect rock talus areas from disturbance by heavy equipment.
- 8) RIPARIAN AREAS AND FISHERIES Develop site specific measures where appropriate. Maintain at least 100' buffer along streams. Debris left in streams and drainages may be detrimental or beneficial and should be assessed on a site specific basis. Prevent siltation to streams. Fine sediment (less than 0.85 mm diameter) should remain at < 20% of spawning gravel in trout streams. In streams: maintain $\geq 80\%$ natural shade over water; maintain $\geq 80\%$ natural bank protection; composition of sand, silt, and clay should remain within 20% of natural levels.
- 9) FENCES Provide jumps or top rails on fences, or lay-down fences, within areas of high wildlife use (e.g., travel corridors). Bottom wire should be barbless and at least 18" above ground in antelope or deer habitat. Maximum fence height should be 42". Minimum spacing between top two wires should be 10". Do not use woven wire fencing
- 10) REVEGETATION AND RESTORATION Revegetation should utilize native grasses, forbs, and shrubs beneficial to wildlife. Incremental revegetation is preferred in areas where work is conducted during spring and summer. Sections of right-of-way should be rehabilitated as construction is completed. Revegetated areas which have not become established by the end of the growing season should be treated to prevent erosion and site degradation (e.g., mulching, contouring, water bars).

SPECIES-SPECIFIC RECOMMENDATIONS

- 1) THREATENED AND ENDANGERED SPECIES Determine which state and/or federally listed species could occur in the project area. Sources of information include:

New Mexico Department of Game and Fish
PO Box 25112
Santa Fe, New Mexico 87504
(505) 476-8101 [State-listed wildlife]

New Mexico Department of Energy, Minerals and Natural Resources
Forestry Division
1220 St. Francis Dr.
Santa Fe, New Mexico 87505
(505) 476-3200 [State-listed plants]

U.S. Fish and Wildlife Service
New Mexico Ecological Services State Office
2105 Osuna, NE
Albuquerque, New Mexico 87113
(505) 346-2525 [Federally-listed plants and animals]

Contact the above agencies for assistance in determining presence or absence of threatened and endangered species and development of protective measures.

- 2) DEER AND ELK Protect browse and forage plants.
- 3) TURKEY Identify and protect roost tree groups (winter roost trees are most critical). Roost tree groups can be described as:
- Large open topped trees ($\geq 13''$ dbh, $> 40'$ tall, especially ponderosa pine)
 - Canopy cover $> 55\%$;
 - Basal area > 100 ft²/ac.
 - Accessible from clearing directly up slope, not isolated from stand.
 - Provide nesting habitat in ponderosa pine or mixed conifer where practical by creating slash piles (10' diameter x 3' high) or leaving unlopped tree tops. Nesting habitat should be within $\frac{1}{2}$ mile of dependable water.
- 4) RAPTORS Protect known nest tree groups. Protect perch and roost trees adjacent to cliffs, major ridges and openings.
- 5) BEAR Protect mast (oak & juniper) and forage plants. Leave large diameter dead or down trees for insect forage.

- 6) TREE SQUIRRELS Protect stands with high squirrel activity (e.g., nest trees, large middens). Protect trees with existing cavities.

- 7) NON-GAME BIRDS When abandoning or realigning old electric lines, leave 10% to 30% of the abandoned poles standing for perching and cavity nesting birds, especially in areas lacking natural snags. Numbers and location of poles to be left standing should be coordinated with the U.S Fish and Wildlife Service and New Mexico Department of Game and Fish. The taller the poles the better, but under existing lines, leaving four to ten feet of the old pole standing will provide useful habitat. If poles are still sound, artificial nesting cavities can be created. Heavily creosoted, potentially toxic poles should be cut at ground level and removed.

TRENCHING GUIDELINES

NEW MEXICO DEPARTMENT OF GAME AND FISH

November 1994

Open trenches and ditches can trap small mammals, amphibians and reptiles and can cause injury to large mammals. Periods of highest activity for many of these species include night time, summer months and wet weather. Loss of wildlife can be minimized by implementing the following recommendations.

- To minimize the amount of open trenches at any given time, keep trenching and back-filling crews close together.
- Trench during the cooler months (October – March). However, there may be exceptions (e.g., critical wintering areas) which need to be assessed on a site-specific basis.
- Avoid leaving trenches open overnight. Where trenches cannot be back-filled immediately, escape ramps should be constructed at least every 90 meters. Escape ramps can be short lateral trenches sloping to the surface or wooden planks extending to the surface. The slope should be less than 45 degrees (100%). Trenches that have been left open overnight, especially where endangered species occur, should be inspected and animals removed prior to back-filling.

State wide there are 41 threatened, endangered or sensitive species potentially at risk by trenching operations, (Source: 11/01/94 query of Biota Information System of New Mexico, version 2.5). Risk to these species depends upon a wide variety of conditions at the trenching site, such as trench depth, side slope, soil characteristics, season, and precipitation events.

Trenching Guidelines

AMPHIBIANS (9 Species)

Sacramento Mountain Salamander	<i>Aneides hardii</i> (C2, ST)
Jemez Mountain Salamander	<i>Plethodon neomexicanus</i> (C2,ST)
Colorado River Toad	<i>Bufo alvarius</i> (ST)
Western Boreal Toad	<i>Bufo boreas boreas</i> (C2,SE)
Arizona Southwestern Toad	<i>Bufo microscaphus microscaphus</i> (C2)
Spotted Chorus Frog	<i>Pseudacris clarkii</i> (SE)
Great Plains Narrowmouth Toad	<i>Gastrophryne olivacea</i> (SE)
Chiricahua Leopard Frog	<i>Rana chiricahuensis</i> (C2)
Lowland Leopard Frog	<i>Rana yavapaiensis</i> (C2, SE)

REPTILES (15 Species)

Rio Grande River Cooter	<i>Pseudemys concina gorzugi</i> (ST)
Reticulate Gila Monster	<i>Heloderma suspectum suspectum</i> (SE)
Texas Horned Lizard	<i>Phrynosoma cornuttum</i> (C2)
Dunes Sagebrush Lizard	<i>Sceloporus graciosus arenicolous</i> (ST)
Bunch Grass Lizard	<i>Sceloporus scalaris slevini</i> (SE)
Mountain Skink	<i>Eumeces callicephalus</i> (ST)
Giant Spotted Whiptail	<i>Cnemidophorus burti stictogrammus</i> (C2,SE)
Gray-Checkered Whiptail	<i>Cnemidophorus dixonii</i> (C2, SE)
Blotched Water Snake	<i>Nerodia erythrogaster transversa</i> (ST)
Mexican Garter Snake	<i>Thamnophis eques megalops</i> (C2,SE)
Arid Land Ribbon Snake	<i>Thamnophis proximus diabolicus</i> (ST)
Narrowhead Garter Snake	<i>Thamnophis rufipunctatus</i> (C2, ST)
Green Rat Snake	<i>Senticolis triaspis intermedia</i> (ST)
Mottled Rock Rattlesnake	<i>Crotalus lepidus lepidus</i> (ST)
New Mexico Ridgenose Rattlesnake	<i>Crotalus willardi obscurus</i> (FT, SE)

MAMMALS (17 Species)

Arizona Shrew	<i>Sorex arizonae</i> (C2, SE)
Least Shrew	<i>Cryptotis parva parva</i> (ST)
Goat Peak Pika	<i>Ochotona princeps nigrescens</i> (C2)
White-sided Jack Rabbit	<i>Lepus callotis gaillardi</i> (C2, ST)
Penasco Least Chipmunk	<i>Tamias minimus atristriatus</i> (SE)
Organ Mts. Colorado Chipmunk	<i>Tamias quadrivittatus australis</i> (C2, ST)
Arizona Black-Tailed Prairie Dog	<i>Cynomys ludovicianus arizonensis</i> (C2)
Cebolleta Southern Pocket Gopher	<i>Thomomys bottae paguatae</i> (C2)
Guadalupe Southern Pocket Gopher	<i>Thomomys bottae guadalupensis</i> (C2)
Mearns' Southern Pocket Gopher	<i>Thomomys bottae mearnsi</i> (C2)
Southern Pocket Gopher	<i>Thomomys umbrinus emotus</i> (ST)
Hot Springs Cotton Rat	<i>Sigmodon fulviventris goldmani</i> (C2)
Yellow-Nosed Cotton Rat	<i>Sigmodon ochrognathus</i> (C2)
White Sands Wood Rat	<i>Neotoma micropus leucophaea</i> (C2)
Arizona Montane Vole	<i>Microtus montanus arizonensis</i> (SE)
Meadow Jumping Mouse	<i>Zapus hudsonius luteus</i> (C2, ST)
Black-Footed Ferret	<i>Mustela nigripes</i> (FE)

KEY TO STATUS:

- FE Federal Endangered
- FT Federal Threatened
- C1 Federal Candidate, group 1
- C2 Federal Candidate, group 2
- SE State Endangered
- ST State Threaten