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The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE.
Washington, D.C. 20426

Subject: Review of draft Environmental Impact Statement for the Construction and Operation of the Natural Gas Pipeline Facilities Proposed by Rockies Express Pipeline, LLC, FERC No. CP07-208-000, in Wyoming, Nebraska, Ohio, Missouri, Illinois, and Indiana.

Ms. Bose:

Thank you for the opportunity to review the draft Environmental Impact Statement (EIS) for the Proposed Rockies Express East Pipeline (REX East) Project. The Department of the Interior (Department), including the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Geological Survey (USGS), has reviewed the draft EIS and offers the following comments and recommendations pursuant to our jurisdiction and special expertise.

This response is provided in accordance with provisions of the National Environmental Policy Act (NEPA) of 1969 (83 Stat. 852; 42 U.S.C. 4321 et seq.), the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (BGEPA) (54 Stat. 250, as amended, 16 U.S.C. 668a-d), the Migratory Bird Treaty Act (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.), and the Fish and Wildlife Coordination Act (FWCA) (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287), and Executive Orders 11990 and 13186.

GENERAL COMMENTS

The draft EIS includes the compressor station located at Mexico, Missouri; however, we understood that this facility is part of the Rockies Express West Pipeline Project, which is currently under construction. If this EIS also addresses the same compressor station, reviewers would benefit from further clarification on this issue.

Wild and Scenic Rivers Act

Certain resource inventories remain incomplete and elements of project planning have not been provided (including plans and procedures for hydrostatic testing, restoration activities, and stream crossing methods/sequencing/minimization procedures for each tributary crossing). In the absence of this information, the NPS is unable to provide necessary project approvals pursuant to the Wild and Scenic Rivers Act (Act).

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The NPS supports all recommended actions to avoid and/or mitigate impacts to federally designated Wild and Scenic Rivers and their tributaries. The NPS is providing additional requirements, which will be necessary to implement in order to fully meet the requirements of the Act. These requirements are addressed under Wild and Scenic Rivers comments below. Further, some sections of the draft EIS provide incorrect interpretations of the Act and Federal Agency responsibilities. Corrected text to address these concerns is included in page-specific comments.

The Little Miami River and Big Darby Creeks in Ohio are components of the Wild and Scenic Rivers System (System), pursuant to Section 2(a)(ii) of the Act. The NPS, on behalf of the Department, retains responsibilities under Section 7(a) of the Act, and works cooperatively with the States of Ohio and Illinois to ensure other provisions of the Act are fully implemented.

Section 1(b) of the Act contains the Congressional declaration of policy and states:

> It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.

Section 7(a) of the Act provides substantial protection to designated rivers. It states, in part, that:

> No Department or Agency of the United States shall assist by loan, grant, license or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration.

A section 7(a) evaluation, pursuant to the Act, is used to analyze impacts of a proposed water resources project and determine whether any impacts would have a direct and adverse effect on the values for which the river was established, namely its free-flowing condition, water quality, and Outstandingly Remarkable Values (ORV). Federal water resources projects are prohibited, if it is determined that they will have a direct and adverse effect on the values for which the designated rivers were added to the System. Water resources projects include, but are not limited to, dams, water diversion projects, dredging projects, fisheries habitat restoration/enhancement projects, bridge construction or demolition, bank stabilization projects, channelization projects, boat ramps, and other construction activities in the bed or banks that require a section 404 permit from the U.S. Army Corps of Engineers (COE). Water resources projects located within the designated reach, upstream and/or downstream of the designated reach, or on tributaries to the designated reach are subject to section 7(a) review.

The ORVs for the Big Darby Creek include fish and mussel (federally listed and non-listed species) resources; on the Little Miami River, ORVs include aquatic and terrestrial flora and fauna, historic, archeological, geologic, scenic, and recreational resources. Section 1 and section 10(a) responsibilities under the Act provide the context for evaluating potential environmental impacts to nationally significant resources and should be properly considered in the FERC's site planning and impact analysis.

In summary, each component of the System is to be preserved in its free-flowing condition, preserving water quality and ORVs. State-administered components of the System must meet the same standards of resource protection as congressionally designated rivers. To assist in the FERC planning efforts, upon request and if necessary, the NPS will provide a preliminary section 7(a) evaluation document, assuming all necessary information is provided to the NPS. Once project specifications are completed and Clean Water Act section 404 permits through the COE are applied for, the NPS will prepare a final section 7(a) determination for any water resource development projects described in the permit application(s).

The REX East project includes provisions for Horizontal Directional Drilling (HDD) crossings of the Big Darby Creek and of the Little Miami River, and approximately 30 trenched crossings of tributaries to the Big Darby Creek and/or Little Miami River. Based upon information contained in the draft EIS, both HDD crossings would not require construction/modification of the bed or banks of the river and, therefore, would not be considered water resources projects. Trenched crossings of tributaries to the designated reaches of the Big Darby Creek and Little Miami River are considered water resources projects and would require review and approval pursuant to section 7(a) under the "invade or unreasonably diminish" standard. Under this standard, the evaluation would determine if the proposed crossing would invade or unreasonably diminish the scenic, recreational, or fish and wildlife values of the designated reach. A separate section 7(a) evaluation would be required for each of the applicable tributary crossings. In this instance, site-specific plans would be necessary to fully evaluate impacts to scenic, recreational, and fish and wildlife resources. To avoid adverse impacts to fisheries and mussel resources, including their habitats (water flow, water quality), the NPS recommends crossings of all tributaries to the designated reaches of the Big Darby Creek and Little Miami River be conducted by HDD or in the dry (e.g., dam and pump or flume). Construction should occur during low flow periods (September 1 to October 31) and be completed within 72 hours. Blasting in tributaries to the designated river reaches should be avoided. The riparian corridor should be fully restored to its preconstruction condition and include tree planting for bank stability.

The draft EIS indicates hydrostatic testing of various segments of the pipeline may require water withdrawal from the designated rivers and/or their tributaries. If instream construction (modification of the bed/banks) is necessary for any of the proposed water withdrawal structures, a section 7(a) evaluation will be required before the project can be authorized. For water withdrawals from the Little Miami River or Big Darby Creek, the section 7(a) evaluation would identify whether project impacts would have a "direct and adverse effect" on the values for which the rivers were established, namely their free-flowing condition, water quality, and ORVs. For water withdrawal structures on tributaries to the designated rivers, the "invade or unreasonably diminish" standard would apply. Federal water resources projects that are determined to have a "direct and adverse effect" or that would "invade or unreasonable diminish" the above-identified river values are prohibited.

The environmental assessment information contained in Appendix H is insufficient to provide a preliminary or final section 7(a) determination for any of the above-noted water resources projects. At this time, the NPS requests site-specific resource data (recent qualitative and quantitative habitat condition assessments for aquatic resources and terrestrial/riparian habitats), the location and proposed crossing methods (including the distance from designated river, timing, and duration of construction activities), methods to reduce impacts (including impacts to recreational values from noise and visual intrusions), and associated restoration plans for each of the 30 individual tributary crossings. Crossing information should also indicate if the stream is

perennial, intermittent or ephemeral, the streambank width, and if blasting or hydrostatic testing is proposed.

Once individual project specifications are finalized and Section 404 of the Clean Water Act permits are applied for (either nationwide or individual), the NPS will prepare a final section 7(a) determination for each crossing. Additional data may be requested by the NPS in order to complete its determination(s). Affirmative final section 7(a) determinations must be submitted to the COE before any section 404 permits are authorized.

Nationwide Rivers Inventory

Section 5(d) of the National Wild and Scenic Rivers Act requires that:

> In all planning for the use and development of water and related land resources, consideration shall be given by all Federal Agencies involved to potential national wild, scenic and recreational river areas.

A Presidential directive and subsequent instructions issued by the Council on Environmental Quality required that each Federal Agency as part of its normal planning and environmental review processes, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Rivers Inventory (NRI). Further, all Federal Agencies are required to consult with the NPS prior to taking actions that could effectively foreclose wild, scenic, or recreational status for rivers on the inventory.

The project would cross five rivers listed on the NRI, two in Indiana (Big Walnut Creek and Big Blue River) and three in Ohio (Four Mile Creek, Great Miami River, and Paint Creek). Consultation on these five crossings is incomplete. The NPS requests project-specific information relative to the method proposed for each river crossing and the onsite environmental conditions. On the NRI rivers, dry-ditch crossings (e.g., dam and pump or flume) are preferred. Blasting activities should be avoided.

Wildlife and Endangered Species Act Issues

The FWS recommends that Rockies Express provide adequate compensation for the unavoidable loss of existing and future priority fish and wildlife habitats. The FWS is negotiating with Rockies Express to develop a Conservation Agreement that would address, in part, loss of forest habitat and forest fragmentation (see Wildlife and Endangered Species Act Concerns under Specific Comments below).

For wetlands, the FWS proposes a mitigation ratio for palustrine emergent wetlands of 2:1; for palustrine scrub/shrub wetlands a 3:1 ratio; and for palustrine forested wetlands a 4:1 ratio.

There is inconsistency within the DEIS regarding how long it would take a mature forest to recover after being cleared. On many pages (e.g. 3-17, 4-42, 4-43, 4-52, 4-56, 4-64, and 5-6) it is stated as 30 years or more. On pages 4-221 and 4-224, it is stated as 50 to 100 years. Given that most of the deciduous/mixed forests consist of slow growing hardwoods such as multiple oak species, hickory, beech, and maple, 50 years would seem to be a minimum time to restore a mature hardwood forest.

The FWS is concerned that construction is planned to occur during the summer months during the period when birds will be actively nesting and Indiana bats will be actively utilizing roost and maternity trees. Allowing construction to occur during this time makes it more difficult to avoid direct impacts to birds and bats and requires that additional avoidance and minimization measures be in place than would otherwise be necessary.

Along with plans to avoid distribution of noxious weeds and other invasive plants during construction, there should be a plan to ensure that aquatic invasive species are not inadvertently transferred from one watershed to another during hydrostatic testing of the pipeline.

SPECIFIC COMMENTS

Wild and Scenic Rivers Act

Page 1-15: Please change the last sentence to clarify the NPS is the responsible Federal Agency for making a determination of effect, pursuant to Section 7(a) of the Act. The Federal authorizing Agency, the FERC and/or the COE are responsible for providing all data necessary for the NPS to make a determination.

Page 3-18, Section 3.4.4:

Paragraph 1: Please clarify the second sentence to indicate the river is a designated Wild and Scenic River pursuant to Section 2(a)(ii) of the Act. The State of Ohio is responsible for the day-to-day management of the river. The NPS is the Federal river-administering Agency.

The pipeline alignment appears to cross the Little Miami River at a point south of the town of Waynesville and north of the confluence with Caesars Creek. From Caesars Creek to Cowen Run, the river is classified as scenic, and from Cowen Run to Foster and from Foster to the confluence with the Ohio River, the Little Miami River is classified as recreational. Based on this information, please correct the sixth sentence to indicate the Little Miami River is classified as recreational at the REX East project crossing. The classification of a river is used to indicate the level of development at the time of a river's designation and is used as a baseline when evaluating impacts to ORVs. The Little Miami River's protected values include its free-flowing condition, water quality, and each of the individual ORVs.

Paragraph 2: The sentence "...would cross the Little Miami River at a river segment that is designated for its recreational value but not its scenic value" is incorrect. On the Little Miami River, both scenic and recreational resource values are protected ORVs regardless of the river's classification. Impacts to the river's protected values (its ORVs) should be considered when conducting a comparative analysis of impacts between the proposed Little Miami River crossing and the alternative crossing.

Page 3-25, Section 3.4.7: The sentences in this section beginning with: "The NPS has designated Big Darby Creek, as a Wild and Scenic River with the designation of scenic..." and "The creek is recognized for its 'outstandingly remarkable values' for wildlife (protected fish and mussels) and scenic qualities" are incorrect. Please change to: "The Big Darby Creek is a designated Wild and Scenic River pursuant to Section 2(a)(ii) of the Act. The State of Ohio is responsible for the day-to-day management of the river. The NPS is the Federal river-administering Agency. The Big Darby Creek's free-flowing condition, water quality, and ORVs

are protected by the Act. The Big Darby Creek's ORVs include its diverse fish and mussel communities." Please consult with the State of Ohio to determine if scenic values associated with Big Darby Creek are protected under State law.

Page 3-27: The draft EIS indicates the proposed project route, which includes a HDD crossing of the Big Darby Creek, is environmentally preferable to the HDD crossing of the Big Scioto River. We disagree with these conclusions. The alternative route across the Big Scioto River maximizes length along existing right-of-ways, crosses one less water body and avoids 0.1 miles of forested land, nearly 0.1 mile of residential land, and 5.1 miles of cultivated land. Further, the draft EIS states that a geotechnical study for the HDD indicates a boulder/cobble zone within the proposed route, which may be problematic during drilling operations. While we agree there would be no direct impacts to the Big Darby Creek assuming the HDD is successful, there appears to be a certain degree of risk associated with this assumption. If the HDD fails or if there is an inadvertent release of drilling fluids that reach the Big Darby Creek, impacts could be considerable. The NPS indicates alternative construction methods (trenching) for pipeline crossing of the Big Darby Creek would constitute a direct and adverse effect to the Big Darby Creek and could not be permitted. The Department would request that the FERC consider instead a HDD crossing of the Big Scioto River.

Page 4-31: paragraph 2: This paragraph indicates the REX East project would use blasting activities in or adjacent to 53 perennial water bodies. Please indicate if any of the proposed water bodies are tributaries to designated reaches of either the Big Darby Creek or Little Miami River. If so, alternatives to blasting should be fully explored in those cases.

Page 4-31: The FWS concurs with the FERC recommendation that Rockies Express file a revised HDD contingency plan that indicates the agencies that would be contacted if a frac-out occurs.

Page 4-32, Section 4.3.4: Please add a bulleted item to the list: "developing any required site-specific construction plans for each tributary subject to section 7(a) review and adhering to any additional requirements pursuant to the Act, including restoration and mitigation measures."

Page 4-36, Wild and Scenic Rivers:

Paragraph 1: Please delete the second sentence. Please add after the existing third sentence: "On these two rivers in Ohio, the NPS is responsible for reviewing federally assisted water resources projects pursuant to Section 7(a) of the Act and the State of Ohio is responsible for fulfilling the remaining requirements of the Act."

Paragraph 2: It may be helpful to clarify the dual designation both rivers receive (State and Federal Acts) and outline protections received under each of the two laws.

Paragraph 5, last sentence: Please change to read: "An open-cut crossing would cause temporary and permanent impacts to free-flowing condition, water quality, and fish and wildlife values of both rivers and would likely result in a direct and adverse effect finding, pursuant to Section 7(a) of the Act."

Page 4-40, paragraph 2: Please indicate that NPS approval may be required, depending on the methods used for withdrawing hydrostatic test water from designated rivers and/or their

tributaries. Measures to avoid/reduce impacts to protected river values, particularly aquatic resources, water quality, and recreational opportunities need to be fully evaluated.

Page 4-81, paragraph 2: In this section, several rivers, which are not part of the System of rivers, are discussed within the context of their ORVs. It is not clear what this might mean for rivers without a Federal designation. To avoid confusion with the Federal requirements, please distinguish the ORVs in this section from the ORVs on the Big Darby Creek and Little Miami River, which are protected values pursuant to the Act.

Page 4-81 bulleted recommendation: Please insert into the first sentence: "...or tributaries to designated Wild and Scenic Rivers" to follow the last phrase "...as described in table 4.6.2-1 in the first sentence."

Page 4-97: On the Big Darby Creek and Little Miami River, all mussel species (federally listed and non-listed) are protected pursuant to the Act. As such, we recommend the REX East project not withdraw hydrostatic test water from these two rivers or from tributaries that serve as a population source for mussels.

Page 4-140, second bullet: Please clarify that prior to construction and section 404 permit approval/certification by the COE, a section 7(a) determination is required. The NPS recommends coordination between the REX East project sponsors, COE, and the NPS should take place prior to the section 404 permit application process.

Page 4-141, paragraph 4: Please change "In a meeting on July 10, 2007, the NPS, which administers the National Wild and Scenic Rivers program..." to state "In a meeting on July 10, 2007, the NPS, which is the Federal administering Agency on the Big Darby...."

Appendix H: Preliminary Wild and Scenic Rivers Environmental Assessment

Page H-4, Section 2.0, last sentence: Please clarify this statement to indicate the NPS will prepare appropriate section 7(a) evaluations for individual qualifying water resources projects that involve the Big Darby Creek, Little Miami River, and/or their tributaries. Final section 7(a) documents will be rendered for each individual situation at the time of the section 404 permit application. Federal permits may not be issued unless the NPS finds there would be no direct and adverse impacts to free-flow, water quality, or individual ORVs, or the NPS finds that activities on tributaries would not invade or unreasonably diminish the scenic, recreational or fish and wildlife values of the designated river.

Page H-5, Section 3.0: The referenced Appendix A and Table A-1 are either incorrectly identified or not present. It is not clear if these are appendices to the document contained in Appendix H or appendices to the draft EIS.

Page H-8, Section 4.1 paragraph: The NPS considers all tributaries (e.g., ephemeral, intermittent, and perennial) of the designated reaches of the Big Darby Creek and Little Miami River as environmentally sensitive water bodies. These water bodies have an important hydrological and biological relationship to the designated reaches of the Big Darby Creek and Little Miami River. Open-cut crossing methodologies in these streams could potentially have significant impacts to water quality, stream geomorphology, and aquatic resources.

Page H-11, Section 5.1: Section 16 of the Act defines free-flow as "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway." While we are pleased to learn that streamflow will be maintained during water body crossings, this section fails to fully evaluate direct, indirect, and cumulative impacts to water quality, recreation, and fish and wildlife values of the Big Darby Creek and Little Miami River. We note flow will be altered on 4 tributaries to the Big Darby Creek and on 26 tributaries to the Little Miami River. Please indicate if crossing activities will occur simultaneously, and if so, please quantify cumulative impacts to recreation or aquatic values in the Big Darby Creek and Little Miami River.

Please provide the data and analysis to support the conclusion that removal of 150,000 gallons of hydrostatic test water from the Little Miami River, 107,950 gallons from Caesar Creek and 150,000 gallons from Big Darby Creek would not affect the free-flowing condition or other associated water dependent values of the respective rivers.

Page H-15, third paragraph: We remind the FERC that all mussel species (federally listed and non-listed) on the Little Miami River are protected by the Act and should therefore be considered sensitive resources.

Wildlife and Endangered Species Act Issues

Pages 3-4 to 3-12 (3.4.1 Mississippi River Crossing Alternatives): Each of the three alternatives for the Mississippi River crossing involves environmental impacts to a river island. Because species surveys (threatened and endangered and species of concern) have not been conducted for all three crossing alternatives, the FWS cannot assess which alternative has the least environmental impact. To fulfill consultation responsibilities under Section 7 of the Endangered Species Act, the FWS recommends that endangered species surveys be conducted at any route that deviates from the proposed preferred alternative. However, based on the environmental comparison in Table 3.4.1-1, the preferred alternative crossing at Blackburn Island appears to have the fewest impacts in terms of forested lands and wetlands. No Indiana bats were detected on Blackburn Island during the 2007 surveys. Without additional survey information for the other routes, the FWS currently agrees that there does not appear to be a clear advantage to other route alternatives.

Page 4-2: In the event that blasting is necessary, the draft EIS refers to site-specific plans that would outline the procedures for notifying nearby property owners, safety precautions, methods for storing, handling, transporting, loading and detonating explosives, and monitoring the effects of explosions. The FWS recommends that site-specific plans, including consultation with natural resource agencies, be completed before any blasting operations.

Page 4-9: The FWS concurs that there is a need to develop a plan for the identification and mitigation of karst areas. Karst areas are highly sensitive ecosystems that frequently contain rare and endemic species. The draft EIS states that approximately 23% of the pipeline route could potentially traverse karst areas that occur from 10 to 100 feet below the land surface. In reading this section, it was not clear to us if this same situation applies to horizontal directional drill areas (HDD). We recommend that this be clarified in this section of the final EIS. Where HDD would, or is likely to, encounter karst areas, natural resource agencies should be consulted prior to construction.

Page 4-37: The FWS concurs with the FERC recommendation that Rockies Express successfully complete their HDD crossing of the Little Miami River and the Big Darby Creek prior to construction, as well as not use the Little Miami River as a source of hydrostatic water.

Pages 4-39 to 4-41: The FWS concurs with the proposed measures to minimize the impacts of hydrostatic testing on aquatic organisms.

Pages 4-41 to 4-42: There are three levels of impacts to wetlands: temporary, long-term, and permanent. Removal of forested wetlands has a long-term impact even if the forest is allowed to regenerate because it would take 50 or more years to recover. This long-term impact should be identified consistently in the text and in tables such as 4.3.7-2, where an additional column for long-term impacts should be added. As currently presented, the table is misleading because it appears that only the "operational" areas will have impacts beyond the construction period. There is a permanent impact if the forest is not allowed to re-establish.

Page 4-46: The FWS recommends that the FERC recommendation on wetland restoration be expanded at least to all sensitive wetlands as identified in Table 4.3.7-3 and preferably to all wetlands. According to the DEIS (page 4-221, paragraph 1), "all remaining wetlands in Missouri, Illinois, Indiana, and Ohio should be considered important for conservation". The Service has previously stated its recommended restoration ratios in the General Comments section, which are: for palustrine emergent wetlands a 2:1 ratio; for palustrine scrub/shrub wetlands a 3:1 ratio; and for palustrine forested wetlands a 4:1 ratio.

Pages 4-48 and 4-49: The FWS concurs with the FERC recommendation that Rockies Express should coordinate with the FWS to develop a Wetland Mitigation Plan, and file with the Secretary a draft Wetland Mitigation Plan and the results of the agency coordination, before the start of construction. However, the FWS disagrees with statements made in paragraph two on page 4-48. The FWS contends that the FERC should require compensatory mitigation for both permanent and long-term loss of forested wetlands. Habitats, such as forested wetlands, that will require 50 or more years to recover need to receive compensatory mitigation for the temporal loss of the habitat. This adverse impact, and associated mitigation, is consistently and inadequately described throughout the draft EIS.

Pages 4-52 and 4-56: The draft EIS does not provide the reader with a clear understanding of the potential impacts of forest fragmentation and this needs to be corrected in the final EIS. For example, Brown-headed Cowbirds (*Molothrus ater)* are estimated to travel a maximum of up to 0.5 to 0.75 miles into a forest to deposit their eggs in other birds' nests. Other edge predators such as various hawks, striped skunk, raccoon, and fox will also take advantage of openings in forests to increase predation. A pipeline right-of-way that traveled 1 mile through an unfragmented forest with a construction width of 125 feet would remove 15.15 acres of forest habitat. However, if the increased area of nest predation that cowbirds could now utilize were factored in at a conservative 0.5 miles from each edge of the 1 mile right-of-way, an additional 640 acres of forest habitat would be impacted with regard to nesting birds above the 15 acres that were actually removed. The attached table indicates that this project has 20 linear miles of non-collocated right-of-way through forested habitat where birds of conservation concern breed. Using the logic above, that translates to 12,800 acres of forested habitat with adverse impacts to migratory birds of conservation concern. There are additional acres of similarly fragmented forest habitat where the nesting bird species are not in such an imperiled condition. This information needs to be presented in the final EIS.

Pages 4-55 and 4-56: Table 4.4.1-2 indicates that there will be 3,101.9 acres of forested habitat removed resulting from construction of the REX East project. On the following page, the DEIS states that 1,054.4 acres of forested habitat removed will be from areas collocated with existing pipelines and 1,137.5 acres of forested habitat removed will be from unfragmented forest habitat (i.e. the pipeline route is through undisturbed forest). That leaves 910 acres of cleared forested habitat unaccounted for which is apparently not collocated or unfragmented. Please clarify the status of this unaccounted acreage.

Pages 4-56, 4-70, and 4-71; three FERC recommendations: It should be noted that representatives from Rockies Express have met with the FWS on only two occasions to discuss an MBTA Conservation Agreement and forest loss and fragmentation. Only during the second meeting, held on January 3, 2008, were there serious discussions regarding any of the topics. There clearly will not be agreements on any issue by the FERC's established deadline. The FWS maintains serious doubt that any agreements will be reached. Based on our prior experience with Rockies Express' preceding project, REX West, the FWS has stated repeatedly since the initial meeting on REX East, that they will not enter into any Conservation Agreement after the final EIS is completed. In the case of the REX West project, an MBTA Conservation Agreement was to be completed subsequent to the final EIS. Rockies Express chose not to consummate that agreement and the intended protection and mitigation was not completed. The final sentence in sub-section 4.5.3 will not be an accurate statement if no agreement is reached and the final EIS should reflect what has actually occurred or not occurred prior to finalization.

Page 4-59, Table 4.4.2-1: The FWS disagrees with the fourth column heading, "Temporary Impact". As we have repeatedly commented and as the text of the draft EIS often admits, clearing of forested areas is a long-term impact at best, not a temporary one. The column should be labeled "Long-term Impact".

Pages 4-66 to 4-71, Sub-section 4.5.3: The sub-section focuses primarily on a narrow list of migratory birds which does include those species that are in greatest peril from further population or habitat loss. However, the final EIS should state that all migratory birds are protected under the MBTA and that many more species than those listed would be impacted by this project.

Page 4-70, 1st paragraph: There are additional areas of concern in Indiana with regard to forest fragmentation. Some of the largest areas include, but are not limited to MPs 243.25, 249.5, 250.25, 273.25, 278.5, 304.4, 314.75, 332, 336, 341.6, and 376 to 383.

Page 4-70: The following concept has been part of the negotiations between the FWS and Rockies Express for development of a conservation agreement. However, because the issue is so vital to precluding direct take of migratory birds, particularly those of conservation concern (http://www.fws.gov/migratorybirds/reports/BCC2002.pdf), the FWS is requesting that this concept become a part of the conditions of the final EIS and/or the construction permit in the event that a conservation agreement is not reached. To wit: "In forested areas specified in the attached table and where the pipeline route is not collocated with an existing pipeline, Rockies Express will not commence construction prior to July 15, unless otherwise authorized in writing by the FWS, to ensure that most forest nesting species will have fledged their initial brood." While these are the currently known areas, it is possible that areas could be reduced or added if new information becomes available.

Page 4-70, last complete paragraph: EO 13189 also requires that an agency, "restore and enhance the habitat of migratory birds, as practicable" (Section 3(e)(2).

Page 4-86: The draft EIS indicates Rockies Express has identified all known maternal bat roost trees along the right-of–way. For clarity, the final EIS should state that the entire pipeline route has not been recently surveyed for maternal roost trees and that such a survey cannot be completed (because Indiana bats are currently in their hibernacula) until after the final EIS is completed.

Page 4-87: Unsupported statements are made about what Indiana bats may or may be expected to do during construction activities. In paragraph 2 on this page the draft EIS states that an Indiana bat might temporarily leave the site because of the noise coming from an HDD operation but would probably return. There are no data to support this assumption. Presumably the statement refers to the maternity colony located near the proposed HDD drill site on the Big Darby. In the last paragraph on the same page, the draft EIS states that the FWS has acknowledged that given the already fragmented nature of the landscape, removal of additional forested land would not be expected to have a measurable effect on bat use. To support this statement, the removal of forested habitat is cited as a percentage of the entire landscape, and indeed the percentage is quite small. The problem with such an analysis is that the bat is restricted in its use of a fragmented landscape to just those forested areas which remain contiguous. Contiguous forested areas may represent a tiny percentage of the whole, but if they are adjacent to foraging areas or provide commuting opportunities between foraging and roosting areas, they represent vital linkages in a landscape already severely reduced by patchiness. The issue that remains unaddressed is that it is not the amount of forest loss so much as its arrangement on the landscape that is of importance to the bat.

Page 4-91: The FWS concurs with the FERC recommendation that prior to construction or cutting or removal of trees, Rockies Express needs to complete consultation with the FWS on the Indiana bat.

Page 4-92: Provided that Rockies Express implements the measures identified for construction of the proposed compressor station, the FWS expects to be able to concur that the construction is not likely to adversely impact the Whooping Crane (*Grus american*).

Page 4-93: The FWS concurs with the FERC recommendation that Rockies Express complete a habitat survey for the eastern massasauga snake. The FWS should be consulted concerning the survey.

Page 4-97: The FWS concurs with the FERC recommendation that Rockies Express not withdraw hydrostatic test water from waterbodies where endangered mussels or glochidia/host fish or juveniles could be directly impacted. The FWS recommends additional text restricting withdrawal of hydrostatic test water from the vicinity where other major mussel (non-listed) beds occur. The FWS also concurs with the FERC recommendation that Rockies Express file completed mussel survey reports for federally listed mussels along with documentation of consultation with the FWS and ODNR.

Page 4-99: The FWS concurs with the FERC recommendation that Rockies Express file completed survey reports for running buffalo clover along with documentation of consultation with the FWS.

Pages 4-131 to 4-133: Where the pipeline construction will remove forests, either palustrine or upland, within a Conservation Opportunity Area or Important Bird Area, the FWS recommends that forest habitat be replaced or protected at a mitigation ratio of 6:1.

Page 4-210, second paragraph: The FWS contends that a major reason for assessing cumulative impacts has been overlooked, both in this statement, and in the analysis that follows in sub-section 4.13. A primary purpose of cumulative impacts analysis is to understand the larger picture of impacts caused by the proposed project coupled with other past, current, and future projects. For example, a clear and comprehensive portrayal of the cumulative impacts of wetland loss and forest loss and fragmentation would indicate that cumulatively these impacts have been severe in the project area. The final EIS should indicate that any additional habitat loss, regardless of size, would continue to exacerbate the problem and, therefore, further habitat losses need to be avoided, minimized, or mitigated. Currently, the sub-section fails to do this.

Pages 4-220 to 4-223: The FWS disagrees with the presentation of cumulative impacts for wetlands from the various projects, as they did in their comments on the Advanced draft EIS. Cumulative loss of wetlands for each project should be presented for the entire state, not simply where the projects are collocated. This gives an accurate picture of the amount of habitat lost and the cumulative impact to wildlife dependent upon this habitat. The current presentation of only collocated areas is misleading and is contrary to CEQ guidance on cumulative impacts. As previously stated, the FWS also disagrees with the depiction in the tables (4.13.3 1 to 5) that loss of forested wetlands is temporary. As stated in the draft EIS (page 4-221, paragraph 2), it may take 50 to 100 years for these forested wetlands to recover. That is not a temporary impact, it is long-term at best and needs to be identified as such.

Pages 4-224 to 4-225: As with wetlands, the FWS disagrees with the depiction of cumulative loss of forested habitat. For each of the projects compared, the complete loss of forested habitat in a state needs to be presented. As with wetlands, it is unimportant if the losses occur in the same county or not. Only by presenting the full loss of forested habitat by these projects will the reader be able to grasp the true cumulative impacts to forested habitat. In addition to the specific projects, estimates should be provided for the annual loss of forested habitat due to urban expansion and similar development. These estimates should be readily available from state or local governments. The text continues to inappropriately describe temporary loss of forested habitat. Removal of forested habitat is not temporary, it is long-term at best.

Page 4-224: There is a statement in the second paragraph that a 50-foot-wide permanent right-of-way would be maintained in an herbaceous state. Rockies Express had indicated to the FWS that in forested areas, they would allow 10 feet on each of the outside edges to return to forested habitat and an additional 10 feet on each side to return to shrub/scrub habitat with only 10 feet maintained in an herbaceous state. However, the Rockies Express statements do not appear to coincide with statements made in the draft EIS.

Page 4-225, last sentence of third complete paragraph: The FWS disagrees with the implications of this sentence, that the currently recommended mitigation would minimize cumulative impacts to the greatest extent practicable. As the FERC has recommended in other parts of the draft EIS, and as the FWS strongly supports, Rockies Express can mitigate for loss of forest habitat, forest fragmentation, impacts to migratory birds, and loss of habitat for Indiana bats, by conducting off-site mitigation for forest loss and fragmentation. This concept, along with various minimization concepts proposed by Rockies Express, needs to be fully described in the final EIS, either in the alternatives analysis or in mitigation proposals.

Page 4-225, last paragraph: While the statement is correct as far as it goes, the FERC has not required Rockies Express to do all that it can to avoid, minimize, and mitigate impacts resulting from forest loss and fragmentation as required under NEPA, the FWCA, the MBTA, and Executive Order 13186.

Page 4-226: The FWS questions the statement that unregulated hunting, fishing, and trapping has resulted in the historical decline of wildlife. While that may have been true during early settlement periods, these activities have all been regulated for over sixty years and wildlife populations would have recovered by now if other factors such as habitat loss were not a factor. We suggest that the statement be revised, clarified, or supported with literature citations.

Page 4-226 to 4-227, Raptors and Other Migratory Birds: The first two paragraphs inadequately describe cumulative impacts to migratory birds. Forest loss and fragmentation will have serious cumulative impacts from this and other projects. The full losses have not been clearly presented in this document as stated in previous comments. Agreements between Rockies Express and the FWS to minimize and mitigate for forest loss and fragmentation and to address impacts to migratory birds do not exist at this time. There is no detailed analysis of impacts to interior breeding birds from forest fragmentation as will currently occur. The paragraph beginning at the bottom of page 4-226 and continuing on to page 4-227 addresses American Golden-plover (*Pluvialis dominica*) and Smith's Longspur (*Calcarius* pictus) in the opening sentence. However, nothing else that follows in the paragraph applies to either of these two species, neither of which nests within the project area. They simply utilize it for a number of weeks as a staging area during their spring migration to the Arctic tundra, where they nest. Neither the American Golden-plover nor Smith's Longspur utilize forest habitat. Rather, they typically forage in open agricultural fields and historically would have utilized moist grasslands. There are a number of species of conservation concern within the total project area that do utilize interior forest habitat and that will be negatively impacted by this and other projects that remove and fragment forest habitat, but they are neither identified nor addressed in this sub-section.

Page 5-7, second paragraph: Every forested location along the construction right-of-way has a high potential for being breeding sites for migratory birds. The FWS has identified ten forested sites (enclosed) where the pipeline is not collocated and where the presence of birds of conservation concern is probable. The FWS is recommending that the FERC preclude construction at these ten locations until after July 15 to avoid direct impacts prior to unfledged young. Forest fragmentation at these and other forested sites along the construction right-of-way will have a long-term impact upon migratory birds and Indiana bats.

<u>Literature Citations</u>

Sections 4.5 through 4.7, Wildlife, Fisheries, and Threatened and Endangered Species, pages 4-62 through 4-109

The draft EIS makes reference to several factual or generalized statements without supporting scientific documentation. The final EIS would be enhanced if supporting references for such statements were identified and included in the literature cited section. Examples include but are not limited to the following:

- "Most mobile wildlife would leave the project area during construction…After construction, depending on their habitat requirements, most wildlife would return." (page ES-4, second to last paragraph)
- "Species utilizing edge habitat and non-forested lands would return to the disturbed area after construction activities have ceased; therefore, impacts on wildlife in these habitats would be minimal." (page 4-66, 1st full paragraph)
- "Individual eagles could find other suitable roosts in similar habitat surrounding the Project area, and eagles would be expected to return to the Project area when construction activity has ceased." (page 4-69, 1st full paragraph)
- "Given that locating alternate roosting trees is a typical process for the Indiana bats and that the bats typically utilize more than one roost tree per season, and up to 20 alternate sites, roost tree availability for maternal colonies is not likely to be a limiting factor for occupation within an area, even if a primary roost tree is lost." (page 4-86, 2nd full paragraph)
- "They [Whooping Cranes] use a variety of habitats during migration including croplands for feeding and large palustrine wetlands." (page 4-92, 1st full paragraph)
- "The Loggerhead Shrike uses edge habitat with nests along roads, hedgerows, or fence rows in agricultural areas." (page 4-103)
- "The decline of the Indiana bat is due in part to commercialization of roosting caves, human disturbance, and possible insecticide poisoning" (page 4-229, 4th paragraph).

Contradictory statements regarding the potential impact on Indiana bats from the activities resulting from the proposed project need to be addressed. On page 5-9 (1st full paragraph) it is stated that, "…we determine that the Rockies Express East Project is likely to adversely affect this species"; whereas, on pages 4-91 and 5-9, it is stated that "…the Project would have no effect on the hibernacula (the designated critical habitat) during construction or operation of the Project."

References, page K-12

The USGS (2006) citation is incorrectly cited. The correct citation is:

U.S. Fish and Wildlife Service. 1981. The Platte River ecology study special research report. U.S. Fish and Wildlife Service, Jamestown, ND. Jamestown, ND: Northern Prairie Wildlife Research Center. Available on-line at http://www.npwrc.usgs.gov/resource/habitat/plriveco/index.htm (Version 16JUL97).

CONTACTS

For general issues under the auspices of the NPS, please contact Regional Environmental Coordinator Nick Chevance, Midwest Regional Office, National Park Service, 601 Riverfront Drive, Omaha, Nebraska, 68102, telephone 402-661-1844. For information regarding Wild and Scenic Rivers or rivers listed on the NRI, please contact Wild and Scenic Rivers Coordinator Sue Jennings at 402-661-1848. For general wildlife or habitat issues, please contact Jeff Gosse, Region 3 Regional Office, 1 Federal Drive, Ft. Snelling, Minnesota 55111, telephone 612-713-5138. For issues regarding the Endangered Species Act, please contact Jennifer Szymanski, 555 Lester Avenue, Onalaska, Wisconsin 54650, telephone 612-713-5342.

SUMMARY COMMENTS

The Department has jurisdictional authority as the river-administering Agency over both the Little Miami River and Big Darby Creek and their tributaries, under the Act. The NPS represents the Department in these matters. We remind the FERC and Rockies Express that once section 404 permits are applied for (either nationwide or individual permits), the NPS will prepare final section 7(a) determinations for each qualifying crossing, and affirmative final determinations must be submitted to the COE before any section 404 permits can be authorized. The NPS recommends HDD crossings of the Big Darby Creek, Little Miami River, and Caesars Creek. The HDD or dry crossings (dam and pump or flume) are strongly recommended for all crossings of tributaries to the designated reaches of the Big Darby Creek and Little Miami River. Hydrostatic testing and blasting on tributaries to designated reaches should be avoided.

The FWS represents the Department in its responsibility for migratory birds and federally listed species. The FWS has concerns regarding the direct and cumulative impacts resulting from loss and fragmentation of forest habitat, both upland and palustrine, and the indirect impacts that these losses will have upon the migratory birds and Indiana bats which utilize these habitats. The impacts of forest fragmentation have not been clearly presented in the draft EIS. While the FERC has stipulated that Rockies Express should develop, prior to the end of the draft EIS comment period: an upland forest mitigation plan, a forest fragmentation mitigation plan, and a MBTA Conservation Agreement; none of these plans or agreements have been completed. The FWS remains concerned that without such agreements, there will be direct and cumulative impacts to forested habitat and adverse impacts to the wildlife that are dependent upon this habitat. Proposed construction during the nesting season for migratory birds and the active season for Indiana bats increases the difficulty in avoiding direct impacts to these species.

The Department has a continuing interest in working with the FERC to ensure that project impacts to resources of concern to the Department are adequately addressed. We appreciate the opportunity to provide these comments.

Sincerely,

Michael T. Chezik

Michael T. Chezik
Regional Environmental Officer

Enclosure

Rockies Express Pipeline - East Project
Areas of Fragmentation Concern and Pipeline Collocation for Migratory Birds as Outlined by the U.S. Fish and Wildlife Service on September 12, 2007

State	County	Area of Concern	Begin Milepost	End Milepost	Length of Area of Concern (Miles)	Mileposts where Pipeline is Collocated (and facility of collocation)	Amount of Area Collocated (Miles)	Amount of Area Not Collocated	Migratory Bird Species of Concern
Indiana	Franklin	N/A	386.0	388.3	2.3	Not collocated	0.0	2.3	cerulean warbler; hooded warbler; worm-eating warbler; Kentucky warbler
ndiana	Franklin	N/A	389.5	392.0	2.5	Not collocated	0.0	2.5	cerulean warbler; hooded warbler; worm-eating warbler; Kentucky warbler
ndiana	Franklin	N/A	397.0	398.0	1.0	Not collocated	0.0	1.0	cerulean warbler; hooded warbler; worm-eating warbler; Kentucky warbler
Indiana	Franklin	N/A	399.3	400.0	0.7	Not collocated	0.0	0.7	cerulean warbler; hooded warbler, worm-eating warbler; Kentucky warbler
5.9	Perry	Harrison Township	557.0	562.9		Entirely collocated (Texas Eastern)	5.9	0.0	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
6.5	Perry	Clayton Township	562.9	569.4		562.9 - 564.6 and 565.7-569.4 (Texas Eastern)	5.4	1.1	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Muskingum	Clay Township	569.4	571.8	2.4	Entirely collocated (Texas Eastern and AEP Powerline)	2.4	0.0	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Muskingum	Brush Creek Township	571.8	575.9	4.1	571. 8 -573. 2 and 574.0-574.7 (AEP Powerline)	2.1	2.0	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Muskingum	Muskingum River riparian corridor	576.3	579.0	2.7	577.8 - 579.0 (AEP Powerline)	1.2	1.5	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Belmont	Somerset Township	618.0	RR2010 MP5.0 (624.8)°	6.8	618.0-619.8 (also RR 2010 MP 0.0) (AEP Powerline)	1.8	5.0	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Belmont	Wayne Township	RR2010 MP5.0 (624.4)'	630.8	6.4	627.2-630.8 (AEP Powerline)	3.6	2.8	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Belmont	Washington Township	630.8	633.9	3.1	Entirely collocated (AEP Powerline)	3.1	0.0	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Ohio	Monroe	Switzerland Township	633.9	639.1	52	633.9 -637.0 and 637.2-638.2 (AEP Powerline and Texas Eastern)	4.1	1.1	cerulean warbler; hooded warbler; worm-eating warbler; Bewick's wren
Total					49.6		29.6	20.0	

These mileposts show what the equivalent original route milepos would be if the reroute were the same length as the original route.

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