



# State Engineer's Office

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FILED  
OFFICE OF THE  
SECRETARY

February 29, 2008

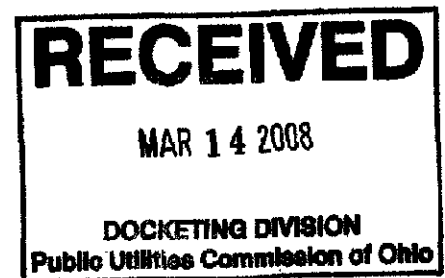
2008 MAR -6 P 2:10 ORIGINAL

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
Docket# CP-07-208-00  
888 1<sup>st</sup> St. N.E., Room 1A  
Washington D.C., 20426

REGULATORY COUNCIL

Bart Jensen  
Natural Resource Group  
1000 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Brian T. Kelly  
Field Supervisor  
U.S. Fish and Wildlife Service  
5353 Yellowstone Road  
Cheyenne, WY 82003



Re: Arlington Compressor Station

Dear Ms. Bose, Mr. Jensen, and Mr. Kelly:

I am writing to you in response to the water needs for the referenced project. A Wyoming Platte River Recovery Agreement (Recovery Agreement) has been executed.

The State of Wyoming has entered into the Platte River Recovery Implementation Program (Program) with the U.S. Department of the Interior and the States of Colorado and Nebraska. The purpose of the Program is to provide compliance with the Endangered Species Act (ESA) for certain historic and future uses in each state. Without such a Program, most water users proposing new projects or rehabilitating or improving existing projects would have to undergo an individual ESA consultation with the U. S. Fish and Wildlife Service (Service).

The proposed water needs at the Arlington Compressor Station qualify as an "existing water related activity" that is covered by Wyoming's Depletions Plan and the Program. The Recovery Agreement formalizes your plan to meet the water needs of your proposed project.

On June 16, 2006, the Service issued a programmatic biological opinion for the Program and water related activities affecting flow volume and timing in the central and lower reaches of the Platte River in Nebraska. The Service determined that Program implementation, including the continued operation of existing and certain new water-related activities, may adversely affect but would not likely jeopardize the continued existence of the federally endangered whooping crane, interior least tern, and pallid sturgeon, or the federally threatened northern Great Plains population of the piping plover, western prairie fringed orchid, and bald eagle in the central and lower Platte River. (The bald eagle has since been removed from the federal endangered species list.) Further, the Service determined that the continued operation of existing and certain new water-related activities was not likely to destroy or adversely modify designated critical habitat for the whooping crane.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

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Ms. Bose, Mr. Jensen and Mr. Kelly

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Therefore, the Program provides coverage required under the Endangered Species Act for the above federally-listed species and designated critical habitat for federal actions, such as issuance of federal permits or federal loans and grants. However, this federal project must undergo the streamlined Section 7 consultation process through the Service's Wyoming Field Office in Cheyenne, Wyoming. Jan McKee with USFWS will be conducting that review. She can be contacted directly at 307.772.2374. A copy of this letter should be attached to the Biological Assessment (See Template Biological Assessment within Guidance for Water Related Activities in Wyoming at the following link: <http://www.fws.gov/platteriver/>).

If you have any question about this letter please contact Phil Stump with HDR Engineering, Inc. any questions at 307.778.9500 or via email: [phillip.stump@hdrinc.com](mailto:phillip.stump@hdrinc.com).

Sincerely,



Sue Lowry, Administrator  
Interstate Streams Division

Enclosure (Executed Wyoming Platte River Recovery Agreement)

cc: Jan McKee, USFWS, Cheyenne

## WYOMING PLATTE RIVER RECOVERY AGREEMENT

This RECOVERY AGREEMENT ("Agreement") is entered into this 26 day of February 2008, [Year], by and between the Wyoming State Engineer ("State Engineer"), acting on behalf of the State of Wyoming and Rockies Express Pipeline ("Water User").

WHEREAS, in 2006, the Secretary of the Interior and the Governors of Wyoming, Nebraska and Colorado signed a Cooperative Agreement to implement the Platte River Recovery Implementation Program ("Program"); and

WHEREAS, the Program implements certain aspects of the U.S. Fish and Wildlife Service's ("Service") recovery plans for four species (interior least tern, whooping crane, piping plover and pallid sturgeon) (collectively the "target species") listed as threatened or endangered pursuant to the Endangered Species Act ("ESA"). The Program is intended to provide defined benefits for the target species and their associated habitats while providing for water development in the Platte River Basin to proceed in compliance with state law, interstate compacts and decrees, and the ESA; and

WHEREAS, on June 16, 2006, the Service issued a programmatic biological opinion ("PBO") concluding that implementation of the Program, along with existing and a specified amount of new depletions, are not likely to jeopardize the continued existence of the target species or destroy or adversely modify their designated critical habitat in Nebraska. The Service also concluded that implementation is not likely to jeopardize the threatened bald eagle or western prairie fringed orchid in Nebraska (The bald eagle has since been removed from the federal endangered species list); and

WHEREAS, Water User is the owner or operator of the proposed Arlington Compressor Station ("Water Project"), which causes or will cause depletions to the Platte River system within Wyoming; and

WHEREAS, the State of Wyoming has prepared and the Governance Committee of the Program has approved the Depletions Plan, Platte River, Wyoming ("Wyoming's Depletions Plan"), which defines the existing water related activities and certain specific new water related activities that are covered by the Program and the PBO;

WHEREAS, Water User's Water Project is covered by the PBO; and

WHEREAS, Water User desires certainty that its depletions can occur consistent with Section 7 and Section 9 of the ESA and therefore its Biological Opinion through participation in the Program; and

WHEREAS, the existing water related activity will be operated on behalf of Wyoming water users.

**NOW THEREFORE, Water User and the State Engineer agree as follows:**

**The State Coordinator of Wyoming's Depletions Plan has determined that the activity will qualify as an existing water related activity subject to certain terms and conditions. In accordance with the proposed water use plan, the Water User:**

**1. Plans to purchase up to 1.0 acre-feet of water from the City of Laramie for hydrostatic testing activities. The City of Laramie is a water user that holds water rights covered under an existing water related activity benchmark or baseline.**

**AND/OR**

**2. Plans to purchase up to 1.0 acre-feet of water from the Town of Rock River for hydrostatic testing activities. The Town of Rock River is a water user that holds water rights covered under an existing water related activity benchmark or baseline.**

**The following general conditions will apply to this Agreement:**

**1. The State Engineer, his employees, and the State of Wyoming do not waive their sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to W.S. 1-39-104(a) and all other laws.**

**2. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. Venue for any court action shall be in the First Judicial District, Laramie County, Wyoming.**

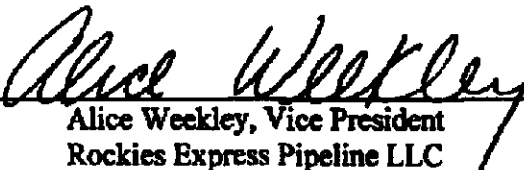
**3. Water User shall indemnify, defend and hold harmless the State of Wyoming, the State Engineer, and its officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of the Water User's failure to perform any of Water User's duties and obligations hereunder or in connection with the negligent performance of Water User's duties or obligations or participation in the Program.**

**4. This Agreement, consisting of three (3) pages, represents the entire and integrated Agreement between the State Engineer and Water User and supersedes all prior negotiations, representations, and agreements, whether written or oral.**

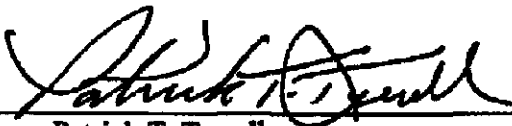
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**Signatures.** IN WITNESS THEREOF, the parties to this Agreement through their duly authorized representatives have executed this Agreement, on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

The effective date of this Agreement is the date of the signature last affixed to this page.


  
\_\_\_\_\_  
Alice Weekley, Vice President  
Rockies Express Pipeline LLC  
Water User Representative

2-26-08  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Patrick T. Tyrrell  
Wyoming State Engineer

2/22/08  
\_\_\_\_\_  
Date

Wyoming Attorney General's Office Approved as to Form:

  
\_\_\_\_\_  
David Willms  
Assistant Attorney General

2/22/08  
\_\_\_\_\_  
Date