



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Twin Cities Field Office
4101 American Blvd E.
Bloomington, Minnesota 55425-1665

June 10, 2010

Great River Energy
12300 Elm Creek Boulevard
Maple Grove, MN 55369

Re: CapX 2020 Brookings-Hampton Line

Dear Mr. Leshner,

The letter supplements our previous correspondence regarding the above-referenced proposed transmission line, and is in follow-up to the April 29, 2010 meeting between Great River Energy (GRE), the Office of Energy Security (OES), and the U.S. Fish and Wildlife Service (the Service). You requested, and we agreed to review information provided before, during, and after the April 29 meeting, regarding the potential need for a permit under the Bald and Golden Eagle Protection Act (BGEPA). Our work together, and the technical assistance the Service is providing, is in keeping with the spirit of BGEPA and the regulations that implement that statute. Therefore, and as discussed in more detail below, we conclude as follows:

1. Transmission lines crossing the Minnesota River at Le Sueur is likely to result in take of bald eagles. If such take does occur, the project applicant will need to have first obtained a permit to avoid violating federal law (BGEPA).
2. BGEPA permits are only available when the take cannot practicably be avoided and the applicant has minimized the impacts to eagles to the extent practicable.
3. You have concluded that a non-aerial crossing (at either available crossing location) is not practicable. Thus, we have focused our analysis on other alternatives to avoid or minimize eagle impacts.
4. Crossing the Minnesota River at Belle Plaine is a practicable alternative which would avoid and minimize impacts to bald eagles (relative to the Le Sueur site). The existence of this alternative makes it unlikely that a BGEPA permit would be available for an aerial crossing at Le Sueur. If an aerial crossing is built at Le Sueur, any take of eagles would be in violation of law.
5. We recommend that OES condition any future authorization relative to this project as follows: 1) applicant will utilize the available Belle Plaine crossing, and 2) applicant will develop and implement an Avian Protection Plan (APP) for the Belle Plaine crossing. This plan will form the basis of any necessary BGEPA permit.

We have reviewed your documentation of the financial cost of non-aerial crossing, as well as the recommendation from the Administrative Law Judge (ALJ), and we understand your position that a non-aerial crossing is not financially feasible in light of the overall scope of the project. We cannot render a final determination on this specific matter at this time, but the issue is largely moot due to the existence of an alternative which is less impacting to bald eagles. Based on the best available evidence (attached), we believe the impacts of the river crossing near Le Sueur would result in the take of one or more eagles. Eagles are susceptible to colliding with distribution and transmission lines,^{1,2,3} avian mortality rates do not differ between transmission and distribution lines,⁴ and bald eagles are at greatest risk of collisions when utility lines are near winter concentration areas.⁵ Added visibility to lines does not always decrease the rate of bald eagle collisions,⁶ and raptor collision with transmission lines increases with number of birds present, temporal factors, and familiarity with the lines (such as resident birds compared to young or wintering birds).⁷ Our attached document provides an extensive literature review, as well as our response to GRE's eagle collision research.

While there appears to be important eagle use areas near both the Le Sueur and Belle Plaine crossings (outlined in our February 8, 2010 letter), we wish to reiterate the previous position of the Service (in our April 30 2009 letter) that if a non-aerial crossing is not practicable, we support the Belle Plaine crossing of the Minnesota River. Based on our literature review and personal communication with eagle experts, the Belle Plaine alternative would be less deleterious of the two sites to eagles. The area near the proposed Le Sueur crossing attracts wintering migrants that would not necessarily be familiar with the transmission line. Additionally, the Le Sueur areas attract eagles in larger numbers than the Belle Plaine site would at a given time. Because bald eagle home range can be 2 miles (greater in the winter), moving the crossing south of Highway 169 would not significantly decrease potential impacts. Despite its lesser impact, the Belle Plaine crossing still has the potential to affect bald and golden eagles. If the Belle Plaine crossing is chosen, the Service will be able to advise the project

¹ Real, J. and Manosa, S. 1997. Demography and conservation of Western European Bonelli's Eagle *Hieraaetus fasciatus* populations. *Biological Conservation*. 79: 59-66.

² Real, J., Grande, J.M., Manosa, S., Antonia, J. 2001. Causes of death in different areas for Bonelli's Eagle *Hieraaetus fasciatus* in Spain. *Bird Study*. 48: 221-228.

³ Bayle, P. 1999. Preventing birds of prey problems at transmission lines in Western Europe. *Journal of Raptor Research*. 33(1): 43-48.

⁴ Janss, G.F., Ferrer, M. 1998. Rate of bird collisions with power lines: effects of conductor-marking and static wire-marking. *Journal of Field Ornithology*. 69(1): 8-17.

⁵ Faanes, C.A. 1987. Bird behavior and mortality in relation to power lines in prairie habitats. United States Department of the Interior Fish and Wildlife Service. Fish and Wildlife Technical Report 7. 31 pp.

⁶ Mojica, E.K., Watts, B.D., Paul, J.T., Voss, S.T., Pottie, J. 2009. Factors contributing to bald eagle electrocutions and line collisions on Aberdeen Proving Ground, Maryland. *Journal of Raptor Research*. 43(1) 57-61

⁷ Harron, D. 2003. Potential Effects of Transmission Lines and Other Linear Developments on Wildlife in Manitoba, Working Draft. Joint Review Panel for the Mackenzie Gas Project.


proponents on the need for an incidental take permit of eagles once the project details have been finalized. The Service will need to take into consideration the actual line location, structure design, line height, construction details, and project timetable. Based on current literature, historic eagle nest locations, and advice from raptor experts, a 'take' of eagles is possible even in the Belle Plaine location.

The Service would like to work with the CapX2020 project to develop a project-specific Avian Protection Plan (APP) which would include minimization and monitoring efforts at Belle Plaine crossing. The ability of the project proponent to implement these measures will determine if a disturbance permit is necessary. If the Service determines that an eagle take is likely at the Belle Plaine crossing, this APP can be used as the basis for a disturbance permit.

In conclusion, we respectfully note that you may not agree with all of our conclusions or recommendations. We also understand that you have difficult decisions to make, and that there are many complicating factors involved in selecting your river crossing site. However, in the spirit of providing technical assistance **before** eagles are impacted, we must simply offer our best advice that an aerial crossing at Le Sueur is more likely to harm bald eagles than an aerial crossing at Belle Plaine. Again, since the Belle Plaine option is practicable, it appears unlikely that a BGEPA permit would be issued for an aerial crossing at Le Sueur.

We would welcome the opportunity to work with you to develop an Avian Protection Plan to minimize impacts to eagles at the Belle Plaine crossing, and to assist you in any way possible in obtaining a BGEPA permit for this activity.

Sincerely,



Tony Sullins
Field Supervisor

Enclosure

Cc: Deborah Pile, Office of Energy Security
Scott Ek, Office of Energy Security
Charles Blair, Minnesota Valley National Wildlife Refuge