



KANSAS

DEPARTMENT OF WILDLIFE AND PARKS

KATHLEEN SEBELIUS, GOVERNOR

1 September 2005

Nelson S. Teague, Jr., Director of Project Transactions
Greenlight Energy
The Court Square Building, 310 Fourth Street N.E.
Charlottesville, VA 22902

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Dear Mr. Teague:

We evaluated the materials you submitted regarding Phase II of the Elk River Windfarm. We received a Phase I Environmental Assessment for Cowley and Elk counties, a Phase I Avian Risk Assessment (ARA) for both counties, and a Biological Assessment (BA) for the American burying beetle (AB beetle) for Elk County.

In our previous response we discussed the potential issues with critical habitats in Elk County for the AB beetle. We stated that Kansas statutes and regulations require special action permits by the department for projects affecting critical habitats for state-listed threatened or endangered species pursuant to the *Kansas Nongame and Endangered Species Conservation Act* of 1975. From our review, we conclude that an action permit by the department will not be required for the American burying beetle for the portion of the proposed project in Elk County. This determination is based on the fact that the BA used the protocols established by the U.S. Fish and Wildlife Service and the low probability that the American burying beetle occurs within the project area. However, we do caution the authors of the BA about using statements such as that in the *Conclusions* section that based on their survey results "...the American burying beetle does not occur in the proposed project area...." These statements insinuate that conclusive evidence exists that the beetle does not occur within the project area. Their results show the beetle was not detected in their survey transects and thus one could conclude that densities of beetles might be so low that they could not be detected in this survey. A one-time survey does not conclusively demonstrate that the beetle does not occur anywhere within the proposed project area.

We previously commented on this project in its earlier stages, and so won't get into the details but simply remind you of those concerns discussed in that review. The *Avian Risk Assessment* for the proposed site does reiterate the potential negative issues discussed in many different forums; these mainly focusing on collision risks, fragmentation, and habitat displacement. We do have some comments and questions regarding the conclusions in the ARA.

1. We disagree with the conclusion that with current land management practices that the overall effect of this project will be minimal and that moderate effects to species like the Greater Prairie-chicken are expected. There are generalizations in the ARA that

- current land management practices are limiting the mosaic of habitats available to grassland-dependent birds. Was this somehow quantified to demonstrate this? Have any pre-construction studies been conducted to assess the populations of more sensitive grassland species and overall bird populations? It is likely that some of the species that do not thrive in areas with early intensive grazing and annual burning are likely present in lower densities than areas with management practices more conducive to those species. However, if these species are displaced from habitat as a result of the construction and operation of this project, then we would consider that significant especially when one considers the potential cumulative effects from multiple facilities in prairie habitats. Birds may be displaced not only within the facility but potentially beyond the boundary of each facility.
2. One project, originally initiated by Greenlight, is nearly operational and your company is now working on getting its second project in place. How can we understand any cumulative effects without having any pre-construction population inventories? We have not been made aware of any pre inventories on bird populations. Also, we had discussed with you, at a meeting in Manhattan and a recent meeting at this office, about the potential for post monitoring studies. What is the status of that on this project? What is the likelihood that Greenlight will sell this project to another company as with the one near Beaumont that might shut out access to conduct post studies?
 3. The last conclusion in the ARA is that we cannot fully understand the effects to avian communities until a project is in place and BACI studies conducted. We agree and reiterate that, as stated above, a facility is set to be operational by sometime this fall and we do not know of any plans for a post study on this site nor do we have evidence that a pre-construction study was conducted on the aforementioned site or for the proposed project for that matter. BACI studies cannot be conducted without pre and post data.
 4. Conclusion number six states that the greater threat to the prairie-chicken would be from nesting and foraging habitat loss rather than loss of lek habitats. We agree with this assertion. The conclusion goes on to insinuate that hunting is more of a threat than this proposed facility. This is stated elsewhere in the ARA as well. This is a totally unfounded and categorically false statement. Hunting where habitat is healthy and intact simply harvests surplus birds on an annual basis, much as a rancher harvests grass from the prairie using livestock. Construction of high towers will permanently disrupt the reproduction previously seen in the area. This is a deterministic event that fragments travel between good habitat and may have repercussions beyond the impact radius where prairie chickens avoid nesting. If these accumulate, there will be lasting impacts on Greater Prairie-chicken populations.
 5. In section 1.9.6 the statement is made that tourism poses as much or more of a threat to sensitive grassland species than this proposed project would. Again, this is an unfounded statement. Nature tourism programs and promotional materials are very sensitive to minimizing negative impacts to sensitive species. Precautions are

emphasized in publications and efforts by Watchable Wildlife, Inc., the Kansas Nature-based Tourism Alliance, the *Watching Kansas Wildlife* viewing guide and many other programs dealing with nature-based tourism. Related to specific wildlife viewing impacts, historical observational data of such activities at the Cimarron National Grasslands and data from other viewing situations indicate little effect on prairie-chicken leks. Research conducted on Lesser Prairie-chickens indicates there is much more concern about nesting success due to proximity of vertical structure, such as wind turbines and transmission lines, than disturbances at leks where most wildlife viewing opportunities would occur. The expansion of subdivisions and homes through further development of the Flint Hills and tallgrass prairie is certainly another major threat to sensitive species and shown to be a major cause of nesting avoidance by Lesser Prairie-chickens and assuming similar behavior by Greater Prairie-chickens. However, at a landscape level, such an important and potential focus species as Greater Prairie-chicken for wildlife viewing businesses would naturally benefit from an industry dependent on the continued good population health of this species. Contrary to the assertion made in the report as a threat, a nature-based tourism industry could be a driving force towards better wildlife conservation efforts for Greater Prairie-chickens and other wildlife of the Flint Hills and tallgrass prairie. This could be expected through a resulting better understanding and appreciation of wildlife needs and driven by financial incentives of an industry dependent on that wildlife's continued good population health.

6. We agree that mitigation should be part of the equation for any wind facility constructed in prairie habitats. This does not mean we endorse this project in any fashion, but believe mitigation efforts should be adopted if this project does go forward. The department, through a multi-agency effort, is helping to develop mitigation guidelines on another proposed wind project elsewhere in Kansas.

Thank you for the opportunity to provide this review. If you have questions, just contact us.

Sincerely,



Chris Hase, Ecologist
Environmental Services Section
chrish@wp.state.ks.us

xc: Reg. 4 F&W Sup.
Reg. 5 F&W Sup.
Reg. 1 Research Biologist, Rodgers
Asst. Sec. Oper., Sexson
USFWS, LeValley
KBS, Liechti