

and adjust flood insurance claims under their own names based on an Arrangement with the Federal Insurance Administration (FIA) published at 44 CFR part 62, appendix A. The WYO insurers receive an expense allowance and remit the remaining premium to the Federal Government. The Federal Government also pays flood losses and pays loss adjustment expenses based on a fee schedule. In addition, under certain circumstances reimbursement for litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by the FIA based on documentation submitted by the WYO insurers. The complete Arrangement is published in 44 CFR part 62, appendix A. Each year FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Arrangement.

Though not substantive, there has been a recent change to the marketing guidelines discussed in the Arrangement. As noted in the first sentence of the third paragraph of 44 CFR part 62, appendix A, Article III. B. of the Arrangement:

[t]he amount of expense allowance retained by the Company may increase a maximum of two percentage points, depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G.

The marketing incentive percentage will remain the same. However, through a separate document the National Flood Insurance Program is revising its targeted goals regarding the criteria for growth.

During August 2010, FEMA will send a copy of the offer for the FY2011 Arrangement, together with related materials and submission instructions, to all private insurance companies participating under the current FY2010 Arrangement. Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for FY2011 may request a copy by writing: DHS/FEMA, Mitigation Directorate, Attn: Edward L. Connor, WYO Program, 1800 South Bell Street, Room 720, Arlington, VA 20598-3020, or contact Edward Connor at 202-646-3445 (facsimile), or [Edward.Connor@dhs.gov](mailto:Edward.Connor@dhs.gov) (e-mail).

**Edward L. Connor,**

*Acting Federal Insurance and Mitigation Administrator, National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.*

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**BILLING CODE 9110-11-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R5-ES-2010-N132; 50120-1113-0000-F2]

#### Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit and Associated Habitat Conservation Plan for the Beech Ridge Wind Energy Project, Greenbrier and Nicholas Counties, WV

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent and notice of meeting.

**SUMMARY:** Under the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service or "we"), advise the public that we intend to gather information necessary to prepare an Environmental Impact Statement (EIS) on the proposed incidental take permit and associated Habitat Conservation Plan for the Beech Ridge Wind Energy Project (HCP). The proposed HCP is being prepared under the Endangered Species Act of 1973, as amended (ESA). The incidental take permit is needed to authorize the incidental take of listed species as a result of implementing activities covered under the proposed HCP.

We provide this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS.

**DATES:** An "open-house" public meeting will be held on August 9, 2010, from 6 p.m. to 9 p.m. To ensure consideration, please send your written comments for receipt on or before August 23, 2010.

**ADDRESSES:** The public meeting will be held at the Community Center, 604 Nicholas Street, Rupert, WV 25984. Information, written comments, or questions related to the preparation of the EIS and NEPA process should be submitted to Ms. Laura Hill, Assistant Field Supervisor, by U.S. mail at U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241; by facsimile at (304) 636-7824; or by electronic mail (e-mail) at [fw5es\\_wvfo@fws.gov](mailto:fw5es_wvfo@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Hill (**ADDRESSES**) at (304) 636-6586, extension 18. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877-8337 for TTY assistance.

## SUPPLEMENTARY INFORMATION:

### Reasonable Accommodation

Persons needing reasonable accommodations in order to participate in the public meeting should contact Laura Hill (**ADDRESSES**) at (304) 636-6586, extension 18, no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

### Background

Section 9 of the ESA and Federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. Under the ESA, the following activities are defined as take: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are at 50 CFR 13 and 50 CFR 17.

On December 8, 2009, the U.S. District Court of Maryland ruled that Beech Ridge Energy LLC was in violation of section 9 of the ESA for its potential to take endangered Indiana bats (*Myotis sodalis*) and its failure to file an application for an incidental take permit related to its wind energy project located in West Virginia. The Court determined that take of Indiana bats was likely over the life of the project via collision with turbines or barotrauma (*i.e.*, hemorrhaging of bats' lungs in low-pressure areas surrounding operating turbine blades).

The District Court ruled that Beech Ridge Energy LLC's construction and operation of wind turbines (40 in construction at the time, with a total of 124 hoped for by the end of 2010) would violate section 9 of the ESA unless and until the defendants, Beech Ridge Energy LLC, obtained an incidental take permit. The Court enjoined Beech Ridge Energy LLC from building additional turbines beyond the 40 already under construction, and restricted turbine operation to the bat hibernation season (November 15 to March 31) until Beech Ridge Energy LLC obtains an incidental take permit. The Court also invited the parties to confer on whether they could agree on terms for further turbine operation while Beech Ridge Energy LLC pursued an incidental take permit.

Under the terms of a settlement agreement reached between Beech Ridge Energy LLC and plaintiffs (Animal Welfare Institute, Mountain Communities for Responsible Energy, and David G. Cowan) on January 23, 2010, Beech Ridge Energy LLC has agreed not to build 24 of the original 124 turbines that are closest to known bat hibernacula. While the HCP is under development, the plaintiffs agreed that Beech Ridge Energy LLC may construct an additional 27 turbines (in addition to the 40 already under construction) and may operate these 67 turbines during specified times of the day and year when bats normally are not flying about and, thus, would not be at risk of mortality or injury from turbine operation.

### The Service's Proposed Action

Consistent with the court order and settlement agreement, Beech Ridge Energy LLC has indicated its intent to pursue an incidental take permit. Section 10(a)(1)(B) of the ESA authorizes the Service to issue incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided that, among other requirements, the take will be incidental to otherwise lawful activities, will not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and will be minimized and mitigated to the maximum extent practicable.

In accordance with section 10(a)(2)(A) of the ESA of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), Beech Ridge Energy LLC is preparing an HCP in support of an application for a permit from the Service to incidentally take endangered Indiana bats (*Myotis sodalist*) and Virginia big-eared bats (*Corynorhinus townsendii virginianus*) (covered species). The proposed permit would authorize take of covered species for the lifespan of the project (anticipated to be at least 20 years) and during project decommissioning. The proposed HCP would be designed to avoid, minimize, and mitigate the impacts of any take that may occur.

Beech Ridge did not seek incidental take coverage for the construction of its first 67 turbines. But it now seeks to develop an HCP and seek a permit for covered activities that include the construction of up to 33 additional turbines (including associated construction and upgrade of access roads, and construction of staging areas and collection line trenches for these turbines), operation of the full array of 100 turbines, maintenance of an existing transmission line, and maintenance and decommissioning of the Beech Ridge

Wind Energy Project. Permit coverage may also include certain off-site mitigation activities such as habitat enhancement and installation of cave gates to benefit listed bats. Construction, operation, and decommissioning of the project, and actions to minimize and mitigate impacts, have the potential to take wildlife species protected under the ESA.

The proposed HCP would describe how the effects of the covered activities would be minimized, mitigated, and monitored under the conservation program. Program components would likely include avoidance and minimization measures (such as studies to test and then implement turbine operational changes that effectively reduce mortality and injury of listed bats and other wildlife), long-term monitoring, adaptive management, and mitigation measures consisting of on-site and/or off-site habitat protection and/or enhancement.

### Beech Ridge Wind Power Project Overview

Beech Ridge Energy LLC is developing a wind power project in Greenbrier and Nicholas Counties, West Virginia. The project would be located on approximately 32 kilometers (km) (20 miles (mi)) of ridge lines, approximately 8 km (5 mi) northwest of the town of Trout, about 11 km (7 mi) north-northwest of Williamsburg, and about 14 km (9 mi) northeast of downtown Rupert.

Phase 1 of the Project consists of 67 existing wind turbines and associated collection lines, access road, transmission lines, a substation, an operations and maintenance facility, temporary staging areas, and a concrete batch plant. Beech Ridge Energy LLC constructed 57 of these turbines between June 2009 and March 2010 and plans to construct the remaining 10 Phase 1 wind turbines before August 15, 2010. Beech Ridge Energy LLC proposes to construct an additional 33 turbines upon issuance of an incidental take permit.

Existing wind turbines constructed during Phase 1 of the project consist of 67 General Electric 1.5-Megawatt wind turbines, each with a 77-meter (m) (253-foot (ft)) rotor diameter, and a rotor swept area of 4,654 square m (50,095 square ft). The 33 additional wind turbines would have a maximum 100-m (328-ft) rotor diameter, with a rotor swept area of 7,875 square m (84,454 square ft).

The wind turbine hub height for the existing 67 turbines is 80 m (262 ft). The additional 33 turbines would have a hub height of up to 100 m (328 ft), for an

approximate total height of 117–150 m (389–492 ft) at the rotor apex. Installation of each individual turbine, including access roads, equipment laydown yards, and other supporting infrastructure, will temporarily impact an area of approximately 4.0 acres, while the final footprint of each turbine will be approximately 0.3 acre.

In addition to wind turbines, the project would include the following components:

(1) The project site is accessed using existing county public roadways and privately owned timber roads, plus existing upgraded or newly constructed all-weather access roads. The main access route for the project, including equipment deliveries, will be via County Road 1 North from Rupert to Clearco. An estimated 31,245 ft of existing roads were upgraded and approximately 40,620 ft of new access roads were or will be constructed for the 100-turbine project. Access roads to the turbines will have a temporary width of up to 18.2 m (60 ft) during construction, and a permanent width of 4.9 m (16 ft).

(2) A power collection system delivers power generated by the wind turbines to the project substation. Collector cables placed in trenches and buried underground connect the wind turbines. The underground collection system terminates at the project substation.

(3) A transmission line to connect the project to the existing electric power grid was constructed in 2009. It extends approximately 22.7 km (14.2 mi) northwest from the turbine strings to Allegheny Power's Grassy Falls Substation north of the community of Grassy Falls in Nicholas County, West Virginia. Temporary ground disturbance may be necessary during the life of the project to maintain the transmission line.

(4) An operations and maintenance (O&M) facility is currently being constructed to serve the project, including a main building with the Supervisory Control and Data Acquisition System, offices, spare parts storage, restrooms, a shop area, outdoor parking facilities, a turnaround area for larger vehicles, outdoor lighting, and a gated access with partial or full-perimeter fencing.

Routine maintenance consists primarily of daily travel by technicians that test and maintain the wind turbines. O&M staff travel in pickup or other light-duty trucks. Occasionally, the use of a crane or equipment transport vehicles will be necessary for cleaning, repairing, adjusting, or replacing the rotors or other components of the wind turbines. Cranes used for maintenance activities

are not as large as the large track-mounted cranes needed to erect the wind turbine towers and are likely to be contracted at the time of service and not stored at the facility.

Operations monitoring will be conducted from computers located in the base of each wind turbine tower and from the O&M building and other remote locations using telecommunication links and computer-based monitoring. Over time, it will be necessary to clean or repaint the blades and towers and periodically exchange lubricants and hydraulic fluids in the mechanisms of the wind turbines.

Decommissioning would involve removing the wind turbines, support towers, transformers, substation, and the upper portion of foundations. Site reclamation after decommissioning would be based on site-specific requirements and techniques commonly employed at the time the site is reclaimed. Techniques could include regrading, spot replacement of topsoil, and revegetation of all disturbed areas with an approved native seed mix. Wind turbine tower and substation foundations would be removed to a below-ground depth as agreed upon with landowners.

Approximately 200 workers have been or will be employed over the course of construction. During its year-round operation, there will be 8 to 18 permanent full-time and/or part-time employees on the O&M staff. The project is expected to function for at least 20 years.

The project is located in a rural setting, with the landscape primarily composed of forested areas that are actively cut for timber and coal mining. Several small towns (Trout, Williamsburg, Rupert) occur near the project area, but no homes or residential areas occur within the project.

The HCP and permit will contain provisions to monitor and report on the impacts from the project on birds and bats, as well as the effects of operational changes on wildlife mortality within the wind farm. In addition, any required tree clearing will be conducted during winter when bats are hibernating, unless otherwise authorized by the Service. Other methods to mitigate impacts from the project that may be considered include, but are not limited to, protection and enhancement of Indiana bat habitat outside the project area.

### Environmental Impact Statement

We have selected Stantec to prepare the EIS for proposed issuance of an ESA incidental take permit to Beech Ridge LLC. The document will be prepared in accordance with requirements of NEPA,

as amended (42 U.S.C. 4321 *et seq.*), and NEPA implementing regulations (40 CFR parts 1500 through 1508), and in accordance with other applicable Federal laws and regulations, and the policies and procedures of the Service for compliance with those regulations. Stantec will prepare the EIS under the supervision of the Service, which will be responsible for the scope and content of the NEPA document.

The EIS will consider the proposed action, the issuance of a Section 10(a)(1)(B) permit under the ESA, no action (no permit), and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS. We are currently in the process of developing alternatives for analysis. The alternatives to be considered for analysis in the EIS may include: Variations in the scope of covered activities; variations in curtailment of wind turbine operations; variations in the location, amount, and type of conservation; variations in permit duration; variations in monitoring the effectiveness of permit conditions; or a combination of these elements. We will consider other reasonable project alternatives recommended during this scoping process in order to develop a full range of alternatives.

The EIS will also identify direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomic, and other environmental issues that could occur with the implementation of the proposed actions and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of NEPA, Council on the Environmental Quality Regulations (40 CFR 1500–1508), the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues and alternatives raised by the public, related to the proposed action.

We request data, comments, new information, or suggestions from the public, other concerned governmental

agencies, the scientific community, tribes, industry, or any other interested party on this notice. We will consider all comments we receive in complying with the requirements of NEPA and in the development of an HCP and incidental take permit. We particularly seek comments concerning: (1) Biological information concerning the Indiana bat and Virginia big-eared bat, as well as unlisted bats and birds; (2) relevant data concerning wind power and bat and bird interactions; (3) additional information concerning the range, distribution, population size, and population trends of the Indiana bat and Virginia big-eared bat, as well as unlisted bats and birds; (4) current or planned activities in the subject area and their possible impacts on the environment and resources; (5) the presence of facilities within the project area that are eligible to be listed on the National Register of Historic Places or whether other historical, archeological, or traditional cultural properties may be present; (6) the direct, indirect, and cumulative effects that implementation of any reasonable alternatives could have on endangered and threatened species and their habitats, as well as unlisted bats and birds; (7) adequacy and advisability of proposed minimization and mitigation measures for ESA-listed species and other wildlife; (8) post-construction monitoring techniques; and (9) identification of any other environmental issues that we should consider with regard to the proposed development and permit action.

Written comments from interested parties are welcome to ensure that the full range of issues related to the permit request is identified. Comments will only be accepted in written form. You may submit written comments at the public meeting, or by regular mail, e-mail, or facsimile transmission (*see ADDRESSES*).

All comments and materials we receive, including names and addresses, will become part of the administrative record and may be released to the public. Comments we receive will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8 a.m. to 4 p.m.) at the Service's West Virginia Field Office (*see ADDRESSES*).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold personally identifying

information from public review, we cannot guarantee that we will be able to do so.

#### Author

The primary author of this notice is Laura Hill, U.S. Fish and Wildlife Service, West Virginia Field Office.

#### Authority

The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and National Environmental Policy Act, as amended, (42 U.S.C. 4321 *et seq.*)

Dated: July 1, 2010.

**Anthony D. Léger,**

*Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.*

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**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion: Denver Museum of Nature & Science, Denver, CO

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Denver Museum of Nature & Science, Denver, CO. The human remains and associated funerary objects were removed from Grand County, UT; possibly eastern Utah or western Colorado; Montezuma County, CO; and the American "Southwest."

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects from the Rocky Mountains West was made by Denver Museum of Nature & Science professional staff in consultation with representatives of the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Fort Mojave Indian Tribe of Arizona, California & Nevada; Fort Sill Apache Tribe of Oklahoma; Gila River

Indian Community of the Gila River Indian Reservation, Arizona; Havasupai Tribe of the Havasupai Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona; Ysleta del Sur Pueblo of Texas; Zuni Tribe of the Zuni Reservation, New Mexico, and the Southern Paiute Consortium, a non-federally recognized Indian group.

In the 1940s, human remains representing a minimum of four individuals were likely removed during excavations in eastern Utah or western Colorado by H. Marie Wormington, archeologist. In 1993, Wormington donated these remains to the museum (DMNS catalogue (and CUI numbers) A1985.1 (CUI 24), A1985.2 (CUI 25), A1985.3 (CUI 26), and A1985.4 (CUI 27)). Remains include one adult female found with unshaped rocks (not collected), one child of indeterminate sex, and two adults of indeterminate sex. Most of these individuals are

represented by fragmentary remains. Newspaper wrappings around the remains are dated to March 12, 1949. Wormington's field expeditions during this time focused on the area between Utah and Colorado. No known individuals were identified. No associated funerary objects are present.

In 1938, human remains representing a minimum of five individuals were excavated at the Turner-Look Site near Cisco, Grand County, UT, by Wormington. The human remains were removed during legal excavation on private land. The human remains were accessioned into the museum collection (A533.4A (CUI 28), A533.5C (CUI 29), A533.5B (CUI 30), A533.5C (CUI 31), and A533.6A (CUI 32)). Remains include one child, which was reportedly found with seven associated funerary objects, but only three were collected and in the museum's possession. The additional human remains are composed of one infant and three adult males (one with associated pottery sherds). When excavated these remains were defined within the then incipient culture type "Fremont" although this designation as it was then understood is ambiguous in today's archeological lexicon. No known individuals were identified. The four associated funerary objects are one small circular slate plaque (A533.4B), one stone metate (A533.7A), one lot of shell fragments (A533.36), and one lot of pottery sherds (A533.6B).

In 1968, Francis V. Crane and Mary W.A. Crane donated a hair bundle representing one individual to the museum (AC.7653; CUI 33). Documents indicate the hair was taken from the middle of Montezuma County, CO, in Mitchell Canyon, by Ezra Hambelton. In 1964, the Cranes purchased the hair bundle from the Fred Harvey Company. This bundle of hair is wrapped with a fiber around the middle. The hair is cut straight and is black-brown in color. No known individual was identified. No associated funerary objects are present.

In 1981, the cranium of an adult male was accessioned. The accession records indicate the individual is a "Pueblo Indian, Southwest" (A1150.1; CUI 34). In 1983, two individuals, represented by the right arm bone of an adult of indeterminate sex (AC.2874; CUI 35) and two leg bones of an adult of indeterminate sex (AC.4896A-B; CUI 36), were accessioned. These individuals were originally acquired by the Cranes from Gans, Inc. Southwest Arts and Crafts sometime between 1954 and 1959. Documents indicate these individuals are from the "Southwest." In 1986, two individuals were accessioned (A1988.1; CUI 38 and A1989.1; CUI 39).