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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2017–0105; FXES11140200000–190–FF02ENEH00]

Final Environmental Impact Statement on American Electric Power’s American Burying Beetle Habitat Conservation Plan in Arkansas, Oklahoma, and Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act, make available the final environmental impact statement analyzing the impacts of issuance of an incidental take permit (ITP) for implementation of American Electric Power’s *American Burying Beetle Habitat Conservation Plan in Oklahoma, Arkansas, and Texas* (HCP). Our decision is to issue a 30-year ITP for implementation of the HCP, which authorizes incidental take of the American burying beetle under the Endangered Species Act.

DATES: We will finalize a record of decision and issue a permit no sooner than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may obtain copies of the documents in the following formats:

- **Electronic:**

- <http://www.regulations.gov>, in Docket No. FWS–R2–ES–2017–0105.
- <https://www.fws.gov/southwest/es/Oklahoma/>.
- CD-ROM: Contact Ms. Jonna Polk (see **FOR FURTHER INFORMATION CONTACT**).
- Telephone: 918–581–7458.

- **Hard copy:** You may review the final environmental impact statement (EIS) at the following locations (by appointment only):

- Department of the Interior, Natural Resources Library, 1849 C Street NW., Washington, DC 20240. Call 202–208–5815.
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102. Call 505–248–6920.
- U.S. Fish and Wildlife Service, 9014 E 21st St., Tulsa, OK 74129. Call 918–581–7458.

FOR FURTHER INFORMATION CONTACT: Jonna Polk, Field Supervisor, via U.S. mail at Oklahoma Ecological Services Field Office, U.S. Fish and Wildlife Service, 9014 E. 21st St., Tulsa, OK 74129; or via phone at 918–581–7458.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of several documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The final EIS was developed in compliance with the agency decision-making requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and is based on the habitat conservation plan (HCP) as submitted by American Electric Power (applicant). We described, fully evaluated, and analyzed all three alternatives in detail in our 2018 final EIS.

Our proposed action is to issue an ITP to the applicant under section 10(a)(1)(B) of the ESA that authorizes incidental take of the American burying beetle (*Nicrophorus americanus*; ABB) from the applicant's maintenance, operation, and expansion of its electrical facilities in Oklahoma, Arkansas, and Texas. American Electric Power is one of the largest electric utilities in the country, with an electric system that includes transmission lines, substations, switching stations, and a distribution network. American Electric Power's ability to serve its customers depends on the timely installation, operation, and maintenance of its electric facilities. The plan area for the HCP includes areas where authorized incidental take would occur and conservation measures would take place, a total of almost 32 million acres. The applicant requested a term of 30 years

from the date of ITP issuance. The applicant will fully implement minimization and mitigation measures to offset impacts to the ABB according to the HCP.

The applicant has agreed to include the following minimization measures:

- Reducing erosion by implementing stormwater best practices;
- Limiting use of motor vehicles, machinery, or heavy equipment in occupied ABB

habitat to avoid soil compaction;

- Increasing safety during operation fluid use and storage;
- Limiting disturbance from mechanical vegetation management;
- Limiting the use of artificial lighting in occupied ABB habitat; and
- Providing a training program for all personnel conducting or supervising covered

activities that may disturb ABB-occupied habitat.

The mitigation measures include the following commitments:

- Relieve soil compaction by disking (mechanically breaking up) compacted soil in

laydown areas and material storage areas;

- Revegetate with a native species composition similar to that of the surrounding area (typically warm season grasses) or of the same vegetation type that existed prior to impacts for areas that experienced ground disturbance causing temporary or permanent cover change habitat impacts; and

- Establish off-site habitat mitigation for temporary or permanent cover change and permanent impacts.

In addition to this notice, the Environmental Protection Agency (EPA) is publishing a notice announcing the EIS, as required under the Clean Air Act, section 309 (42 U.S.C. 7401 *et seq.*; see **EPA's Role in the EIS Process** below).

Background

The applicant has applied for an ITP under the ESA that would authorize incidental take of the ABB and would be in effect for a period of 30 years. The proposed incidental take of the ABB would occur from lawful, non-Federal activities from the applicant's repair, maintenance, and construction activities for electrical lines and support facilities (e.g., substations and switching facilities) within the plan area, as well as from activities carried out as part of the HCP's conservation strategy (covered activities). The HCP plan area includes Oklahoma and Arkansas counties within known ABB ranges and Texas counties with ABB occurrence records. The plan area also includes counties in these States where the ABB's range could expand over the ITP term. The final EIS considers the direct, indirect, and cumulative effects of implementing the HCP, including measures to minimize and mitigate such impacts to the maximum extent practicable.

Section 9 of the ESA and its implementing regulations in title 50 of the Code of Federal Regulations (CFR) prohibit "take" of fish and wildlife species listed as endangered or threatened under the ESA. The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt

to engage in such conduct” (16 U.S.C. 1533). The term “harm” is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, we may, under specified circumstances, issue permits that allow the take of federally listed species, provided that the take is incidental to, but not the purpose of, otherwise lawful activity. Regulations governing ITPs for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

On July 3, 2018, we published a *Federal Register* notice announcing the availability for public review of a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the HCP and to evaluate alternatives (82 FR 32861). In July and August 2018, we held public meetings on the draft document in Tulsa, OK; McAlester, OK; Fort Smith, AR; and Texarkana, TX. The public comment period closed on August 17, 2018.

We received 10 comments in total: 8 through regulations.gov, 1 comment via email, and 1 through the U.S. mail. The final EIS provides responses to those comments in Appendix G.

Decision

We intend to issue an ITP allowing the applicant to implement the proposed HCP, identified as the preferred alternative (Alternative B) in the final EIS. We determined that the preferred alternative best balances the protection and management of habitat for the ABB, while allowing the applicant to supply the public’s energy needs. We based our

decision on a thorough review of the alternatives and their environmental consequences. Implementing this decision entails issuing an ITP to American Electric Power and full implementation of the HCP, including minimization and mitigation measures, monitoring and adaptive management, and complying with all terms and conditions in the ITP.

EPA's Role in the EIS Process

In addition to this notice, EPA is publishing a notice in the *Federal Register* announcing final EIS for American Electric Power's *American Burying Beetle Habitat Conservation Plan in Oklahoma, Arkansas, and Texas*, as required under the Clean Air Act, section 309. The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs.

The EPA also serves as the repository (EIS database) for EISs that Federal agencies prepare. All EISs must be filed with EPA, which publishes a notice of availability on Fridays in the *Federal Register*. For more information, see <https://www.epa.gov/nepa>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

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