



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Denver Federal Center, Building 67, Room 118
Post Office Box 25007 (D-108)
Denver, Colorado 80225-0007



EI 20464

June 20, 2014

9043.1
ER 14/300

Ms. Victoria Rutson, Director
Office of Environmental Analysis
Surface Transportation Board
309 E Street SW
Washington, DC 20423

Dear Ms. Rutson:

The Department of the Interior (Department) has reviewed the Supplemental Draft Environmental Impact Statement (DEIS) for the Six County Association of Governments Proposed Rail Line between Levan and Salina, Utah, and provides the following comments for your consideration.

General Comments

We appreciate the addition of southern alternatives B1 and B2 and northern alternative B3 which provide options for achieving the project purpose while incurring fewer impacts to fish and wildlife resources. In the southern portion of the alignment, we support the selection of Alternative B2 as it minimizes impacts to the riparian habitats of the Sevier River. In the northern portion, we support the selection of Alternative B3, as it minimizes wetland impacts adjacent to Chicken Creek reservoir. We note the presence of a mapped spring complex in close proximity to Alternative B3; we recommend that the applicant provide field-level analysis of the location of the springs relative to the alignment and identify measures to avoid impacts to these important aquatic resources. We recommend the FEIS include a commitment to avoid springheads by a minimum protective buffer of 100 meters.

We support the elimination of alternatives N1a and N1b in Mills Valley, which would have direct impacts to least chub (*Iotichthys phlegethontis*) habitat. The U.S. Fish and Wildlife Service (USFWS) found least chub warranted for listing under the Endangered Species Act on June 22, 2010 (75 FR 35398); it is currently a candidate species.

Many of our comments on the original DEIS are still applicable but were not incorporated in this Supplemental DEIS; therefore we are submitting them to you again by reference (letter dated August 17, 2007; attached) for your consideration and urge that your FEIS integrate our recommendations and/or provide specific responses relative to our comments. Our comments

included but were not limited to: the biological inventory methodology; impacts to migratory birds and take under the Migratory Bird Treaty Act; raptor surveys; and invasive species control.

Specific Comments

Page 3-32, Section 3.5.4.2, Impacts to Species of Special Concern – The SDEIS states (page 3-31) that bald eagle winter roost sites (important communal resting areas) are located in the study area, but does not describe impacts to the roost sites that could occur from construction, nor identify measures to mitigate those impacts. If roost sites exist within 0.5 miles of construction activities, we recommend that, between November 1 and March 31, construction activities initiate after 9:00AM and terminate at least one hour prior to official sunset.

Page 3-32, Section 3.5.4.2, Impacts to Species of Special Concern – The SDEIS states (page 3-31) that burrowing owl nests were found on BLM land northwest of Redmond, but it does not describe impacts to the nests from construction and operations nor does it identify measures to mitigate those impacts. We recommend: 1) surveys for this species be conducted in suitable habitat throughout the project corridor to identify all nest locations, and 2) the FEIS commit to implementing protective seasonal and spatial buffers for all raptor nests, per the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck 2002).

Page 3-32, Section 3.5.4.2, Impacts to Species of Special Concern – The SDEIS states that seeps and springs are located in the vicinity of the northern portion of the proposed action; however field level surveys do not appear to have been conducted. The springs may provide habitat for Columbia spotted frog (*Rana luteiventris*), least chub (*Iotichthys phlegethontis*), spring snails (*Pyrgulopsis* spp.), or other unusual mollusks or macroinvertebrates. We recommend the project proponent conduct field level surveys for seeps and springs and their biota to enable precise corridor siting to avoid these important aquatic sites. We recommend the FEIS include a commitment to avoid springheads by a minimum protective buffer of 100 meters.

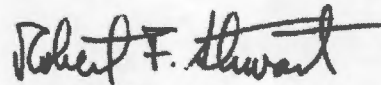
Page 4-7, Section 4.2.3, Voluntary Mitigation Measures for Biological Resources – Neither the DEIS nor the SDEIS describes how the project proponent will avoid take of migratory birds protected under the Migratory Bird Treaty Act. We recommend the project proponent implement the measures identified in Attachment 2, "Migratory Bird Conservation Actions for Projects to Reduce the Risk of Take during the Nesting Season," and that this commitment be identified in the FEIS in Section 4.2.3.

We appreciate the opportunity to provide these comments. If you need further assistance, please contact Betsy Herrmann, Ecologist, at (801) 975-3330 extension 139.

References

Romin, L.A., and J.A. Muck. 2002. U.S. Fish and Wildlife Service. Utah field office guidelines for raptor protection from human and land use disturbances.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Stewart", with a stylized flourish at the end.

Robert F. Stewart
Regional Environmental Officer

cc: Phyllis Johnson-Ball

Attachment 1

(DOI 2007 DEIS comment letter)



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Denver Federal Center, Building 56, Room 1003
Post Office Box 25007 (D-108)
Denver, Colorado 80225-0007



August 17, 2007

9043.1
ER 07/555

Phillis Johnson-Ball
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Dear Ms. Johnson-Ball:

The U.S. Department of the Interior (DOI) has reviewed the Draft Environmental Impact Statement (DEIS) for the Six-County Association of Governments' Proposed 43-Mile Rail Line in Sanpete, Sevier, and Juab Counties, Utah, STB Finance Docket No. 34075 [AKA: Central Utah Rail Project].

Project Description

The project proposes to construct, operate, and maintain a 43-mile rail line between Levan and Salina, Utah, for the purpose of transporting coal and to alleviate truck traffic currently used for transport.

Alternatives

The document analyzes three alternatives:

Alternative A - The No Action Alternative.

Alternative B - The Proposed Action- Includes 21 acres of Federal (BLM administered) Land

Alternative C - Alternative Route - Includes 51 acres of Federal (BLM Administered) Land

We are providing the following comments for your consideration in evaluating this project.

General Comments

The DOI Bureau of Land Management (BLM) has been involved as a cooperating agency for preparation of the EIS. The U.S. Fish and Wildlife Service (USFWS) has been actively involved in the analysis of this project beginning with participation in the initial consultation phase. These Interior Bureaus have attended numerous meetings and provided correspondence on project issues during the NEPA process.

We suggest that an index be provided in the Final EIS to assist with review and preparation of any necessary permits.

Of the two action alternatives presented in the DEIS, the DOI supports the preferred alternative (B) as it would have the least adverse impacts to fish and wildlife resources. We note, however, the potential for impacts to the Redmond Wildlife Management Area and recommend coordination with the Utah Division of Wildlife Resources to avoid and minimize those impacts to the extent possible, and to mitigate any unavoidable impacts.

The project as proposed would have significant impacts to wetlands, estimated in the DEIS to be approximately 160 acres of direct impact. Wetlands in this area have tremendous importance to wildlife, both resident and migratory, and these habitats would be impacted by this project both directly (i.e., 160 acres of fill) and indirectly (e.g., construction disturbance, noise from passing trains, fragmentation of habitat, hydrologic disruption, and water quality impacts from erosion and contaminants). We recommend a more thorough discussion of indirect impacts, avoidance and minimization measures that will be taken, and an evaluation of potential mitigation options in the area.

Juab Valley, in the northern portion of the alignment, contains numerous seeps and springs that may provide habitat for rare and sensitive species such as the spotted frog, least chub, or unusual mollusks or macroinvertebrates. We were unable to find any significant discussion in the DEIS regarding springs and recommend an expanded evaluation of this important biological resource. We recommend: 1) an inventory of springs in the project corridor; 2) a survey of the aquatic biota for any springs determined to be within the zone of direct or indirect impacts, with particular focus on detecting rare or unique species; 3) protection of any springs at risk of degradation of water quality; and 4) compensation for unavoidable impacts to fish and wildlife resources.

The railroad would traverse grazing lands and should be fenced on both sides of the track on federal lands. Where livestock would be separated from water sources, new wells, pipelines and troughs or underpasses would have to be constructed by the applicant to supply water to livestock.

Specific Comments:

Executive Summary, Page ES – 5, Alternative C: This section states, "this alternative was suggested because it minimizes the visual impacts". The statement should explain how the 75 foot high and 550 feet wide long berm created by this alternative would minimize visual impacts.

Page 2-3, last sentence: This sentence states "Once an operator is identified." This seems confusing. Throughout the document it refers to shippers (primarily "SUFCO"); the rail line connecting to "UPRR" mainline; and under the Operating Plan of the Glossary it states, "A document that is provided as part of the proposed application detailing planned railroad by applicant operations following the proposed action." The document should explain who the operator of the rail line would or is likely to be.

Page 2-6: Clarify the difference, if any, between Farmland and Agricultural land. The first paragraph, second sentence states that an alternative was suggested because it would disturb fewer parcels of farmland within the project area. However, page. 2-14, Table 2.4-1 Aesthetics states "Alt C would create more disturbance to agricultural land."

Page 2-6, Table 2.2-2: Alt C shows BLM Acres as 30, however, page 4-14 Table 4.2-1 Alt. C shows Subtotal acres as 42.85. Also, page 4-18 text states 30 acres. The acreages should be made consistent.

Page 3-14, Migratory Birds: As stated in the DEIS, the wetlands associated with Chicken Creek Reservoir, the Sevier River, Sevier River Reservoir, and the Redmond Wildlife Management Area provide important habitat for a variety of migratory birds species including shorebirds. Table 3.3-3 is limited to very common species, and we note that several species of concern (as identified in the 2005 Utah Comprehensive Wildlife Conservation Strategy [Wildlife Action Plan]) have been documented in the project area, such as the American avocet, black-necked stilt, and grasshopper sparrow. These species use habitat found in the study area not only as a "migratory stopover", as stated in the DEIS, but also for nesting. We recommend an expanded evaluation of potential impacts to nesting birds in addition to mitigation measures (e.g. avoidance of vegetation removal during nesting season within potential habitat for Utah Wildlife Action Plan avian species of concern).

Page 3-17: Page 3-16, Section 3.3.4, third paragraph, last two sentences states "As part of mitigation for impacts from this project, surveys for specific species would be conducted prior to construction, if required by the affected land management agency. These surveys would be conducted according to agency approved protocols." This language should be included on page 3-17 as it pertains to threatened, endangered and sensitive (TES) plant species.

Page 3-17, Threatened, Endangered, and Sensitive Species: The DEIS states that surveys were conducted for "other Federally listed and state-listed endangered, threatened, or sensitive species (namely raptors, amphibians, small mammals, migratory birds, and mollusks) to determine if any suitable habitat or individuals existed in the study area". It is unclear from this description the extent of the surveys or the method used (other than describing them as "pedestrian [walking] surveys"). We believe it would be difficult to survey mollusks or amphibians via a pedestrian survey. We recommend noting whether springs were encountered in the right-of-way and, if so, whether they were given a "pedestrian survey" or whether they were surveyed more closely for the presence of least chub, spotted frog, unusual mollusks or macroinvertebrates.

Page 3-18, Table 3.3-4: Bald eagles are no longer listed as threatened under the Endangered Species Act (ESA). They are, however, still protected under the Bald and Golden Eagle

Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Therefore, we recommend that project plans continue to incorporate best management practices for avoiding disturbance or take of bald eagles.

Page 3-19, Bald Eagle and Burrowing Owl: Bald eagles winter roosts have been documented in the study area, along the Sevier River and at Sevier Bridge Reservoir. If roosts are found to occur within ½ mile of construction activities, we recommend that, between the months of November and March, construction activities initiate after 9:00AM and terminate at least one hour prior to official sunset.

On August 9, 2007, during a field inspection of a proposed oil and gas well site and associated access, active burrowing owl habitat (sensitive species) was observed and recorded with GPS data on public land between the Alternative B and Alternative C routes and actually on a segment of the Alternative C route. An active area was also observed on the adjacent State land. Additional baseline information and analysis concerning this species is required.

Pages 3-62 through 3-70, Section 3.12.3 and 3.12.4: Throughout these sections are references to the 5 federally recognized tribes consulted with, the 6 tribes, the 12 tribes, etc. The Final EIS should identify how many and which tribes were actually contacted.

Page 3-62, section 3.12.3: The first paragraph says that 5 tribes were contacted and that they requested additional information once the cultural inventories are complete. The Final EIS should explain whether additional information has been provided to all of the tribes who requested it.

Page 3-65, Section 3.12.4.4: The Numic Expansion theory discussed here has been largely discredited. This discussion should be removed from the EIS.

Page 4-3, Valid Existing Rights To Use Public Land, third sentence: The sentence states that "Valid existing rights include rights to use public . . ." To more accurately define "Valid existing rights", insert "but are not limited to" after the word "include."

Page 4-13, last paragraph, second sentence: This indicates that BLM would determine whether private farmland would remain farmable. Since SEA/STB is the lead agency and BLM has no jurisdiction to determine whether private farmland would remain farmable, the lead agency would make the determination.

Page 4-14, Table 4.2-1: The subtotal of acres for Alternative C is shown as 42.85, however this is not consistent with Table 2.2-2 on page 2-6 or the text on page 4-18 which shows BLM Acres for Alternative C as 30. The number of BLM acres should be made consistent.

Page 4-20, Section 4.2.5.4 : This section indicates that mitigation measures for access to public land and recreation routes are discussed in Section 6.3.2.2, however that section addresses only grazing allotments. An accurate reference and discussion are needed.

Page 4-27, Wildlife in the Area, Construction Impacts: Construction could have an impact on birds nesting under either Alternatives B or C, depending on the season of construction. We recommend that vegetation removal be conducted outside of bird nesting season (approximately April – July) to the extent possible, to avoid the take of migratory birds.

Page 4-27, Wildlife in the Area, Operation and Maintenance Impacts: To avoid take of ground-nesting birds, we recommend that mowing occur outside of the breeding season of ground-nesters (approximately April – July).

Page 4-30, Threatened, Endangered, and Sensitive Species: Change the first sentence to, “USFWS has concurred that the proposed project would have no effect on threatened or endangered species.” The USFWS does not make the determinations, nor do they consult on non-Federally-listed sensitive species.

Page 4-31, Table 4.3-2: Bald eagles are no longer listed as threatened under the ESA. However, because bald eagles continue to be protected under BGEPA and MBTA, it should be noted that there has been documented bald eagle winter roosting in the project vicinity.

Page 4-32, Table 4.3-2: The genus for the least chub is Iotichthyes.

Page 4-44, Impacts to Wetlands and Waters of the U.S., Construction Impacts: The DEIS, either in this section or in Appendix E, should describe how these wetland impact acreages were determined (e.g., what data were used), in absence of a delineation or National Wetland Inventory data.

Page 4-45, Impacts to Wetlands and Waters of the U.S., Construction Impacts: The DEIS states that Alternative B will impact about three acres of lowland riparian habitat near Chicken Creek Reservoir, Sevier Bridge Reservoir, Redmond Lake, and the Sevier River floodplain, but that Alternative C would not impact any lowland riparian habitat. This seems inconsistent, given that Alternative C has the same alignment as Alternative B, with the exception of the southern portion near Redmond Lake.

Page 4-90, Section 4.14.4.2, Paiute ATV Trail System: This section, and other sections in the document should identify the length as well as the height and width of the berms.

Page 4-91, Section 4.15.1, Methodology: Remove the statement “... Effects on visual resources are often difficult to characterize due to the subjective nature of scenic value and differing perception of visual quality.” This statement is itself subjective and does not add to the analysis since this section also notes that impacts were determined by using the BLM Visual Resource Management Program.

Page 4-94, Section 4.15.3, User Groups: Rewrite the last paragraph of this section. The rail line would be under operation 365 days a year which should be described as continual use. The statement that “Users would not have a high sensitivity to the rail itself.” should be changed to discuss impacts on viewers who live along the rail line since tracks will be used every day.

Page 5-1, Cumulative Impacts: The rail line would reduce use of truck hauling activity and anticipates safety and less damage to roads. The Final EIS should explain whether trucks would stop hauling altogether or if they would be re-routed. If truck haul would continue, identify continued hauling of coal by trucks as a reasonably foreseeable action and discuss the effect(s) of continued truck operation if any.

Page 5-8, Section 5.2.6., Aesthetics: This discussion addresses cultural impacts rather than aesthetics. A corrected heading and a discussion of aesthetics is needed.

Page 6-6, Preliminary Environmental Mitigation Measures, Biological Resources, second sentence of item #10: This sentence states: "USFWS has determined that the Proposed Action and Alternatives would have negligible effects on plant communities and the spread of noxious weeds as well as wildlife resources and threatened, endangered, and sensitive species." The USFWS has not made any such statements regarding plant communities, noxious weeds, or sensitive species. The concurrence under ESA by the USFWS, provided February 22, 2007 and documented in Appendix B, applies only to Federally-listed threatened and endangered species.

Page 6-8, Federal Public Lands: The following measure should be added to this section, "The subject right-of-way grant would be issued subject to regulations under 43 CFR 2800 and mitigating stipulations that are either required by policy, law, or regulation or are needed to insure mitigation of associated surface disturbance activities."

Page 6-9, Applicant's Voluntary Mitigation Measures: Add the following measure, "A copy of the Plan of Operations shall be provided to the BLM for their review and approval, prior to beginning any construction activities."

Page 6-13, Applicant's Voluntary Mitigation Measures, Biological Resources: Item #27 specifies that culverts will be installed at surface water crossings; however, the extensive impacts to emergent marsh and wet meadow indicate that significant measures, including culvert installation, should be taken to ensure hydrology is maintained in these areas and that the rail line does not create a hydrologic barrier.

Page 6-13, Applicant's Voluntary Mitigation Measures, Biological Resources: Item #29 should identify the method to be used for monitoring the revegetation sites and also the criteria to determine whether the revegetation has been successful.

Page 6-13, Applicant's Voluntary Mitigation Measures, Biological Resources: Item #30 implies that weed control will be ongoing throughout both construction and operation of the facility. We recommend this section provide more specifics about this program, such as what weeds will be controlled (e.g., State and County-listed noxious weeds only), how often monitoring will occur, what monitoring methods will be used, and the spatial extent of control measures (e.g. within the right-of-way, other areas of disturbance such as hill cuts). We recommend that weed control occur within the right-of-way and incorporate all surface disturbed areas outside of the right-of-way as well, as such areas are extremely prone to weed proliferation.

Page 6-14, Applicant's Voluntary Mitigation Measures, Biological Resources, Item #35: Item 35 refers to the "USFWS conservation agreement" for least chub and leatherside chub; however, this should actually be termed a "state-wide conservation agreement" as it is not a USFWS document but a management plan with numerous agency signatories.

Page 6-14, Applicant's Voluntary Mitigation Measures, Water Resources and Wetlands, Item #37: Item # 37 indicates that mitigation in U.S. Army Corps of Engineers Section 404 permits would be followed. This section also should indicate whether the 404 permits have been acquired and also should include the mitigating measures stipulated in the permits.

Appendix B, Page B-7, Raptors: The DEIS states that, "raptor surveys were conducted along the corridor, although not to the full extent of the advised mile-wide buffer." We commend the project's commitment to following the recommendations in the Utah Field Office's Raptor Guidelines (page 6-13, item #32); however, not knowing the extent to which nest surveys were conducted raises concern that nests within the recommended buffer distances (1/4 to 1 mile depending on raptor species) could be subject to construction-related disturbance. We recommend that the extent of the studies be included in the Final EIS.

Appendix D, pages D-1 and D-3: The header at the top of these pages identifies "Existing Rights-of-way" as Appendix B. This should be changed to Appendix D.

References

Romin, L.A. and J.A. Muck. 2002. Utah field office guidelines for raptor protection from human and land use disturbances. U.S. Fish and Wildlife Service, Utah Field Office, Salt Lake City, Utah.

Utah Division of Wildlife Resources. 2005. Utah Comprehensive Wildlife Conservation Strategy. http://www.wildlife.utah.gov/cwcs/utah_cwcs_strategy.pdf.

We appreciate the opportunity to provide comments on this project. If you have any questions or need further information, please contact me at the address provided above.

Sincerely.

/signed/ 8/17/07

Robert F. Stewart
Regional Environmental Officer

Attachment 2

Migratory Bird Conservation Actions for Projects to Reduce the Risk of Take during the Nesting Season*

U.S. Fish and Wildlife Service (USFWS) Region 6, Migratory Bird Management

May, 2014

Goal: Avoid take of migratory birds and/or minimize the loss, destruction, or degradation of migratory bird habitat while completing the proposed project or action. Under the Migratory Bird Treaty Act (MBTA) take is defined as “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect” a migratory bird (50 CFR § 10.12). **

1. Determine if the proposed project or action will involve below- and/or above-ground construction or habitat-altering activities, because recommended practices and timing of surveys could differ accordingly.
2. If the proposed project or action includes a reasonable likelihood that take of migratory birds will occur, then complete the project or those actions expected to take migratory birds outside of their nesting season to the greatest extent possible. Examples of actions that may take migratory birds include, clearing or cutting of vegetation, burning vegetation, driving or parking equipment on vegetation that may harbor nesting birds, etc. The primary nesting season for migratory birds varies greatly among species and geographic locations, but generally extends from early April to mid-July. However, the maximum time period for the migratory bird nesting season can extend from early January through late August. Due to this variability, project proponents should consult with the USFWS for specific nesting seasons of birds in your project or action area. As early as possible please consult the USFWS in the planning stages of your project for other input on conservation measures to avoid and minimize the take of migratory birds.
3. Complete all project activities that could result in migratory bird take outside the maximum migratory bird nesting season (early January through late August) to the greatest extent possible. If this is not possible, then avoid any habitat alteration, removal, or destruction during the primary nesting season for migratory birds (early April to mid-July).
4. If a proposed project or action includes the potential for take of migratory birds and/or the loss or degradation of migratory bird habitat, and work cannot occur outside the migratory bird nesting season (either the maximum or primary nesting season), project proponents should provide USFWS with an explanation for why work has to occur during the migratory bird nesting season. Further, in these cases, project proponents also should demonstrate that all efforts to complete work outside the migratory bird nesting season were attempted, and that the reasons work needs to be completed during the nesting season were beyond the proponent's control.

5. Where project work must occur during the migratory bird nesting season, project proponents should survey those portions of the project area during the nesting season (but prior to the project or action occurring) to determine if migratory birds are present and nesting in those areas. These bird surveys should occur at least 7-10 days prior to when project work is scheduled to occur in the area. In addition to conducting surveys during the nesting season, entities may also benefit from conducting surveys during the previous nesting season. Such surveys will serve to inform the likely presence of nesting migratory birds in the proposed project or work area. While individual migratory birds will not necessarily return to nest at the exact site as in previous years, a survey in the nesting season the year before the project or action allows the company to become familiar with bird species and numbers present in the project area well before the nesting season in the year of proposed action. Migratory bird surveys also should be completed during the best timeframe for detecting the presence of nesting migratory birds, using accepted bird survey protocols. USFWS Offices can be contacted for recommendations on appropriate survey guidance. Project proponents should also be aware that results of migratory bird surveys are subject to spatial and temporal variability.
6. If no migratory birds are found nesting in proposed project or action areas immediately prior to the time when construction and associated activities are to occur, then proceed with your project activity as planned.
7. If migratory birds are present and nesting in the proposed project or action area, contact your nearest USFWS Ecological Services Field Office and/or USFWS Regional Migratory Bird Management Office for guidance on appropriate next steps to avoid and minimize impacts to (and take of) migratory birds associated with the proposed project or action. Although bald and golden eagles are protected under MBTA they are also covered under BGEPA. Please consult USFWS if there are eagles or eagle nests in or near your proposed project area ***.

* Note: these recommended conservation measures assume that there are no Endangered or Threatened migratory bird species present in the project/action area, or any other Endangered or Threatened animal or plant species, or any designated critical habitat for Endangered or Threatened species present in this area. If Endangered or Threatened species or designated critical habitat are present, or they could potentially be present, and the project/action may affect these species or designated critical habitat for them, then consult with your nearest USFWS Ecological Services Office before proceeding with any project/action.

** The Migratory Bird Treaty Act (MBTA) prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the MBTA has no provision for allowing unauthorized take, the USFWS realizes that some birds may be killed during construction or through other project activities, even if all known reasonable and effective measures to protect birds are used. The USFWS Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships

with individuals, companies, and industries that have taken effective steps to avoid take of migratory birds and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance, or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and undertaking enforcement actions against individuals and companies that take migratory birds without identifying and implementing all reasonable, prudent, and effective measures to avoid that take. Companies are encouraged to work closely with USFWS biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

*** Also note that Bald and Golden Eagles receive additional protection under the Bald and Golden Eagle Protection Act (BGEPA). BGEPA prohibits the take, possession, sale, purchase, barter, offer to sell, purchase, or barter, transport, export or import, of any Bald or Golden Eagle, alive or dead, including any part, nest, or egg, unless allowed by permit. BGEPA also defines take to include "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest, or disturb," 16 U.S.C. 668c, and includes criminal and civil penalties for violating the statute. Further, activities that would disturb Bald or Golden Eagles are prohibited under BGEPA. "Disturb" means to agitate or bother a Bald or Golden Eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an Eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. If a proposed project or action would occur in areas where nesting, feeding, or roosting eagles occur, then project proponents may need to take additional conservation measures to achieve compliance with BGEPA. New regulations (50 CFR § 22.26 and § 22.27) allow the take of bald and golden eagles and their nests, respectively, to protect interests in a particular locality provided that the USFWS finds that such take is compatible with the goal of maintaining stable or increasing eagle breeding populations. However, consultation with the USFWS Migratory Bird, Ecological Services, and Law Enforcement programs will be required before a permit may be issued.