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Endangered Species Act/Bullitt County (Kentucky) Transmission Pipeline: Center for Biological Diversity Notice of Intent to Sue U.S. Fish and Wildlife Service/Corps of Engineers for Alleged Violation

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The Center for Biological Diversity (“CBD”) and Kentucky Resources Council (collectively “CBD”) sent a 60-day Notice of Intent (“NOI”) to Sue the United States Fish and Wildlife Service (“Service”) and United States Army Corps of Engineers (“Corps”) for alleged violations of Section 7 of the Endangered Species Act (“ESA”).

The NOI addresses the Service’s Biological Opinion, incidental take statements (“ITS”), and concurrence, as well as the Corps’ Nationwide Permit 12 (“NWP 12”) verification for the Bullitt County Transmission Pipeline (“Bullitt County Pipeline”).

CBD states that Louisville Gas & Electric proposes to construct a 12-mile methane gas transmission pipeline to serve Jim Beam’s facilities in eastern Bullitt County, Kentucky. The pipeline’s proposed route is stated to include 71 stream crossings along with impacts to wetlands. As a result, Louisville Gas & Electric is stated to be required to obtain a dredge and fill permit from the Corps pursuant to Section 404 of the Clean Water Act.

The Corps is stated to have requested from the Service initiation of formal consultation pursuant to Section 7(a)(2) of the ESA, based on its determination that construction is likely to adversely affect the endangered Indiana bat and the threatened Kentucky glade cress. The Corps is also stated to have determined that the pipeline is not likely to affect the endangered gray bat or adversely modify designated critical habitat for the Kentucky glade cress. Further, the Corps is stated to have concluded that the pipeline is likely to adversely affect the threatened northern long-eared bat (but any effects were addressed by the Service’s programmatic biological opinion for the species). The Corps determinations were stated to be based on a Biological Assessment.

The Service is stated to have provided its concurrence with such determinations and agreed to engage in formal consultation with the Corps regarding the pipeline’s effect on the Indiana bat and Kentucky glade cress. As a result, the NOI indicates that the Service conducted no further analysis on impacts to the gray bat or northern long-eared bat. A biological opinion for the pipeline concluded that it would not likely

jeopardize the Indiana bat or the Kentucky glade cress. It included an ITS with take limits for the Indiana bat, as well as terms and conditions for compliance with such take limits.

The Corps subsequently issued a NWP 12 verification to Louisville Gas & Electric.

CBD alleges in the NOI the following ESA violations:

- The Service's Conclusion that the Pipeline Route Does Not Contain Cave Habitat for the Three Bat Species Lacks a Rational Basis.
- The Corps Did Not Conduct Cave Surveys, and Failed to Apply Survey Protocols for the Indiana Bat within Kentucky.
- The Service Ignored the Best Available Biological Information that the Project Area Contains Karst Cave Features.
- The Service's Consultation Determinations Are All Arbitrarily Based on the Assumption that Caves and Cave Habitat are Absent from the Pipeline Route.
- The Biological Opinion's Jeopardy Determination and Incidental Take Statement for the Indiana Bat are Unlawful.
- The Northern Long-Eared Bat and Gray Bat Concurrences are Unlawful.
- The Corps' Nationwide Permit 12 Verification is Invalid

A copy of the NOI can be downloaded [here](#).