



IN REPLY REFER TO:

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

110 S. Amity Road, Suite 300

Conway, Arkansas 72032

Tel.: 501/513-4470 Fax: 501/513-4480

April 10, 2009

Mr. Curtis Warner  
Environment and Powers Supply Department  
Arkansas Electric Cooperative Corporation  
1 Cooperative Way  
P.O. Box 194208  
Little Rock, AR 72219-4208

Dear Mr. Warner,

This letter confirms the understanding of the U.S. Fish and Wildlife Service, Arkansas Field Office (Service) with respect to effects of the Arkansas Electric Cooperative Corporation's (AECC) hydroelectric generation facility (facility) located in association with Dam No. 2, also known as, Wilbur D. Mills Dam, on the Arkansas River. Our comments are limited to the effects of the hydroelectric facility alone, separate from the effects of the U.S. Army Corps of Engineers (Corps) Dam No. 2 generally, on river flows, fish species, threatened and endangered species, and other matters that may affect fish and wildlife resources.

### **Flows**

The Service understands that the flow schedule is not determined by the AECC, but rather by the Corps pursuant solely to its navigation, flood control, and water allocation requirements. The facility's operating agreement with the Corps does include limits to the amount and rate of flow releases, and based on our review of information provided by AECC, you have complied with those restrictions. We have reviewed historical records provided by AECC and the Corps comparing flows both before and after the facility was constructed at the existing Corps dam, and conclude that the facility is not responsible for any previously existing or potentially adverse flow-related impacts to fish and wildlife resources. This assessment pertains both to the volume of flows and to ramping rates as any effects resulting there from are attributable solely to the Corps' and their operation of the Arkansas River Navigation System, Oklahoma flood control projects, water allocations, and the operations of Wilbur D. Mills Dam and cannot be attributed to AECC or the operation of their facility as these are pre-existing conditions.

### **Water Quality**

We understand that the Arkansas Department of Environmental Quality recently affirmed that the facility's operations "remain consistent with the State of Arkansas' water quality criteria, and that the Arkansas River in that area of the State is not on the 303 d list of impaired waters" (email from Bob Singleton, Program Support Manager, Water Division Planning Section, ADEQ to Stephen Cain, AECC, April 30, 2008). USFWS has no identified water quality concerns about the facility at this time.

## **Clean Water Act**

AECC is in compliance with all recommendations made by the Service in connection with the Clean Water Act Section 404 permit for the construction of the facility, namely, implementation of a plan to mitigate the loss of wetland values. AECC consulted with FWS during the Federal Energy Regulatory Commission license process; FWS did not make recommendations regarding the project during the official review period for that license.

## **Anadromous and Catadromous Species**

USFWS did not issue a mandatory fish passage prescription for American eel (*anguilla rostrata*) at the time of licensing because it was not then a species of concern, and it is not a federally listed species at this time. In any case, it is the Service's position that limited passage is available upstream of the project via the Arkansas Post Canal, which connects the White River (a tributary to the Mississippi River) to the Arkansas River immediately upstream of the facility. Limited passage is also available at the facility site during overflow and pass through flood conditions. If fish passage issues for this or other species are identified in the future they will be addressed at that time.

## **Resident Fish Species**

The Service does not currently have concerns about resident fish passage or adverse impacts to resident fish resources from the facility. There is no information available to suggest negative effects associated with this project apart from pre-existing conditions or effects attributable to Corps operations.

## **Threatened and Endangered Species**

The Service's consultation letters with AECC prior to the facility's FERC licensing made reference to two endangered species, the American alligator and Bald eagle, and generally concluded that the facility would not have adverse effects on those two species. Neither of these species are currently listed as federally threatened or endangered. The Bald Eagle is protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. However, regardless of their current status we believe that the facility is having no effects on these species beyond those attributable to Corps operations and pre-existing conditions.

The Interior Least Tern, a federally listed as endangered species, has been found to inhabit areas downstream of the facility since our commenting on the FERC licensing. In addition, we believe that it is possible that two other federally listed species may be present in the lower Arkansas River downstream of the facility. Those species are:

- \* Pallid sturgeon
- \* Fat pocketbook mussel

The Service issued recovery plans for all three species prior to construction of the facility. Those recovery plans contain no requirements that apply to the facility, nor has the Service issued incidental take authority to the facility. Furthermore, the Service consulted with the Corps in 2005 regarding their operations and provided a Biological Opinion regarding effects to and recovery of Interior Least Tern. Any current effects to Interior Least Tern are pre-existing (existed prior to construction and operation of the hydroelectric facility) and are therefore attributable to the Corps' operations and cannot be attributed to AECC or the operation of their facility.

In regards to the Pallid Sturgeon and Fat pocketbook mussel, there is currently insufficient information available to indicate whether or not they are present in the river system or to suggest adverse effects associated with this project apart from pre-existing conditions or effects attributable to Corps operations. Therefore, the Service has no concerns or comments regarding effects to these species from this facility at this time.

The Service has no additional comments or concerns regarding the AECC facility, from the standpoint of fish and wildlife resources, at this time. If you have any questions or require additional information, please contact me at (501) 513-4489.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsey Lewis", with a large, stylized flourish extending to the right.

Lindsey Lewis  
Fish & Wildlife Biologist