



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

2651 Coolidge Road, Suite 101  
East Lansing, Michigan 48823-6360



September 17, 2020

Jason Kreuzscher, Vice President  
Renewable World Energies  
P.O. Box 264  
100 S. State Street  
Neshkoro, WI 54960

USFWS Consultation Code: 03E16000-2020-SLI-1475; FERC Docket Number: P-10856

Dear Mr. Kreuzscher:

Thank you for your August 12, 2020, request for informal consultation regarding actions proposed for the Au Train Hydroelectric Project (hereafter the Au Train Project) pursuant to section 7 of the Endangered Species Act, as amended (ESA) (16 U.S.C. § 1536), and the ESA's implementing regulations (50 CFR 402.13). The Federal Energy Regulatory Commission (FERC) regulates the Au Train Project and on July 21, 2020, FERC designated Renewable World Energies (RWE) as their non-Federal representative for consultation under section 7 of the ESA (50 CFR 402.08). RWE is serving as the agent for U.P. Hydro, LLC, the FERC Licensee for the Au Train Project.

RWE has filed with FERC a request to preform spillway capacity upgrades as part of a Final License Surrender Application (July 17, 2020). RWE proposed to lower the spillway by 5.5 feet, lower a section of the north embankment by 18 inches, and modify a section of the south levee to be no higher than 6 feet. On August 4, 2020, RWE notified FERC that the initially planned reservoir drawdown proposed as part of the construction upgrades was no longer necessary. RWE is not proposing to remove the project dams for the stated purposes of providing "flood control for the downstream Village of Au Train." On August 4, 2020, FERC issued a letter indicating that they were presently "...considering only the modifications to the North spillway as an interim risk reduction measure for the projects' inadequate spillway capacity as compared with FERC guidelines.... [FERC] will consider your proposed modifications at the South levee in the surrender proceeding."

Because FERC is only currently considering modifications to the North spillway, this consultation concurrence only contemplates that proposed action. FERC has indicated they are "...not considering your proposed modifications to the South levee because it would direct flows to pass through U.S. Forest Service lands during high flow events." To complete the section 7 consultation process for the other phases you have proposed (South levee/License Surrender), additional information will be needed on the impacts of the proposed action to the Forest Service lands, which may provide habitat to some of the species discussed below. This information may

include a description of how you anticipate the flow events to affect Forest Service lands (e.g., the spatial extent of the events under various flows, anticipated frequency, etc.).

The “Review of Threatened and Endangered Resources” you provided, addressed six threatened and endangered species that may occur in the Au Train Project location. These species include Canada lynx (*Lynx Canadensis*), gray wolf (*Canis lupus*), northern long-eared bat (*Myotis septentrionalis*), piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), and pitcher’s thistle (*Cirsium pitcheri*). The spillway, north embankment, and south levee are manmade features and do not provide suitable habitat for the Canada lynx, gray wolf, red knot, and pitcher’s thistle.

You have made “no effect” determinations for the piping plover and Pitcher's thistle. When an action agency determines that a proposed action will not affect a listed species, concurrence from the U.S. Fish and Wildlife Service (Service) is not required. For the Canada lynx, gray wolf, and red knot, it appears that you have made a “not likely to adversely affect” determination (50 CFR 402.13(c)) as you stated the “Proposed Action is unlikely to have an effect” on these species. For the northern long-eared bat, you have indicated that appropriate habitat for the species does exist within the project area, but the proposed action “...is unlikely to have an effect on this species” because no trees will be cut as part of the proposed project.

For the modifications to the North spillway, we concur that the proposed action is not likely to adversely affect the Canada lynx, gray wolf, red knot, and northern long-eared bat. Lacking suitable habitat on the north spillway, any adverse effects to the Canada lynx, gray wolf, and red knot are extremely unlikely and therefore discountable. For the northern long-eared bat, because no potential roost trees will be removed as part of the modifications to the North spillway, we concur that any adverse effects to this species are extremely unlikely to occur and therefore discountable.

Non-Federal representatives may prepare analyses or conduct informal consultations; however, the ultimate responsibility for section 7 compliance under the ESA remains with the Federal agency. If FERC concurs with your determinations, the North spillway as proposed has completed section 7 consultation. We look forward to additional future section 7 consultation on the South levee and the Final License Surrender Application when the additional information requested by FERC is available.

While FERC maintains discretionary involvement or control over the project, reinitiation of consultation is required (50 CFR 402.16(a)) under certain conditions: (1) if new information reveals effects of the project that may affect listed species or critical habitat in a manner or to an extent not previously considered; (2) if the project is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (3) if a new species is listed or critical habitat designated that may be affected by the project.

## Recommendations for Evaluating the Final License Surrender Application

The Service has a variety of roles in the Federal hydropower licensing and planning processes. FERC and the Service both have responsibilities under the Fish and Wildlife Coordination Act (FWCA; 16 U.S.C. § 662) for consultation and full consideration of the effects of the project to fish and wildlife resources. Pursuant to the FWCA, FERC is to include conditions for the protection, mitigation, and enhancement of fish and wildlife. As part of the evaluation of the Final License Surrender Application and National Environmental Policy Act evaluations, we recommend FERC specifically evaluate the following issues and alternatives:

### Floodplains

Executive Order 11988 entitled “Floodplain Management,” requires Federal agencies to evaluate the potential effects of actions it may take in a floodplain to avoid adversely impacting floodplains wherever possible and with the intent of using existing procedures, such as those established under the National Environmental Policy Act to do so. This Executive Order also directs each agency to “...restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities... to water and related land resources planning, regulating, and licensing activities.”

As noted by Renshaw et al. (2013) “...as much as half of the annual sediment load of a river is deposited on its floodplain.... Sediment storage on floodplains thus has significant implications for global nutrient cycling ... and for local transport and storage of sediment-associated nutrients and contaminants .... Floodplain sedimentation also directly impacts the productivity and floristic assemblage of riparian ecosystems... which are among the most diverse and productive ecosystems on Earth...” [internal citations omitted].

The floodplain downstream of the project are also likely to be adversely affected by the disruption of sediment transport resulting from the Au Train Project as proposed for surrender. We recommend a more complete characterization of the fluvial geomorphological changes resulting from the project should be completed. Specifically, the degree of disruption of sediment transport by the impoundment is important to more fully describe in evaluating the environmental effects of the proposed measures for license surrender. Sediment transport is significant for aquatic organisms as their distribution and abundance will be driven by a suite of related parameters including depth, substrate stability and penetrability, current velocity, temperature, nutrient availability, water quality, and refuge from predation.

### Flood Control Benefits

Given the modifications proposed as part of the Final License Surrender are intended to enhance flood flow conveyance, we recommend that the FERC thoroughly describe the amount of benefit that will be provided to the Village of Au Train leaving the dams in place as proposed by RWE.

### Water Quality

FERC should describe how the License Surrender would impact water quality, e.g., temperature impacts from maintaining the impoundment.

Fish Passage

FERC should assess the potential benefits of providing for enhanced fish passage as part of the License Surrender in terms of options, feasibility, costs, and species that could benefit, etc.

The Service looks forward to continuing coordination with FERC and RWE. Please let me know if you have any questions or need additional information, my e-mail: [Scott\\_Hicks@fws.gov](mailto:Scott_Hicks@fws.gov) and direct phone: (517) 351-6274.

Sincerely,

Scott Hicks  
Field Supervisor

cc: Michigan Department of Natural Resources, Norway, MI (E. Gulotty)

## References

Renshaw, C.E., et al., Impact of flow regulation on near-channel floodplain sedimentation, *Geomorphology* (2013), <http://dx.doi.org/10.1016/j.geomorph.2013.03.009>.