



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Bishop Henry Whipple Federal Building  
1 Federal Drive  
Fort Snelling, MN 55111-4056

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March 6, 2006

## Memorandum

To: Assistant Regional Director

Through: Ecological Services Program Manager, Endangered Species

From: Regional HCP Coordinator

Subject: Set of Findings: Northern Indiana Public Service Company and Indiana-American Water Company (TE106233 and TE106231)

On May 3, 2005, the U.S. Fish and Wildlife Service (Service) received two applications for incidental take permits under the Endangered Species Act of 1973, as amended (Act) from the Northern Indiana Public Service Company and Indiana-American Water Company (Applicants). In accordance with the regulations, a joint Habitat Conservation Plan (HCP) accompanied the permit applications. The Service prepared the Environmental Action Statement (EAS) for this incidental take permit (ITP) application request. A *Federal Register* Notice announcing receipt of the permit applications, and soliciting comments on the applications, was published on July 19, 2005. No comments were received during the comment period which ended on August 18, 2005. This memorandum constitutes a Set of Findings for processing the applications and describes the Service's rationale for making its recommendation to issue incidental take permits to the applicants.

## I. DESCRIPTION OF PROPOSAL

The Applicants applied to the Service for permits to incidentally take Karner blue butterfly (*Lycaeides melissa samuelis*) under the authority of section 10(a)(1)(B) of the Act. The 25-year duration permits would allow incidental take within four right-of-way (ROW) segments totaling approximately 86 acres located in northwest Indiana within Lake and Porter County's. Management is required within the ROWs to control tree and shrub growth which could interfere with the transmission lines. Additional activities that would take place include tower maintenance and painting, insulator repair or replacement, static line maintenance, conductor replacement, and emergency work. Emergencies may include tower or line failure due to ice or wind storms and trees falling into conductors. Northern Indiana Public Service Company is also proposing to install an internal communications fiber optic cable on the towers in the Miller ROW in 2005. Natural gas and/or water pipeline maintenance may consist of hydrostatic testing,

valve replacement, and pipeline replacement in section or in total, and emergencies including gas or water pipeline rupture. The Karner blue butterfly is dependent on wild lupine (*Lupinus perennis*), the only known larval food plant. Approximately 4 acres within the ROWs were found to contain lupine during the mapping surveys in 2004. The HCP identifies conservation measures the Applicants will implement for the purposes of minimizing and mitigating incidental take that may occur in the future. The primary goal of the HCP is to minimize and mitigate the unavoidable adverse effects of ground disturbances to KBB habitat from necessary ROW maintenance activities.

## II. SECTION 10(a)(2)(A) HCP CRITERIA - ANALYSIS AND FINDINGS

### 1. The impact that will likely result from such taking

The Applicants have prepared an HCP to address the potential effects of these impacts. The HCP and EAS adequately describe the proposed activities and the anticipated impacts to the Karner blue butterfly and the associated habitat within the project area. Given the Karner blue butterfly has been documented on the ROW, the Service determined incidental take of the species and its habitat would occur as a result of maintenance and construction activities. It is estimated 4 acres of Karner blue butterfly habitat would be temporarily disturbed due to operation and maintenance, and possible construction activities. The HCP provided sufficient information for the Service to evaluate the impacts of the proposed activities. The Service's analysis of the project impact is described in an August 31, 2005, Biological Opinion.

### 2. The steps that will be taken to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances.

The Applicants are responsible for ensuring implementation and compliance with the terms and conditions of the ITP and the conservation measures in HCP. The HCP provides measures to avoid or minimize harm to individuals, mitigation measures to compensate for potential losses, and a monitoring program to track the success of minimization and mitigation measures and avoid potential disturbances to Karner blue butterfly within the project area. All work done as part of this HCP will be funded through the Applicant's annual budget. Funds will be sufficient to cover all work outlined in the HCP, including preparing annual reports.

The following measures will be implemented to avoid, minimize, and mitigate adverse effects on Karner blue butterflies and habitat:

- All activities within the ROWs will be coordinated through Northern Indiana Public Service Company Environmental Health and Safety Department.
- No routine maintenance will be scheduled from April through August unless it can be demonstrated the impacts will not reduce the amount of Karner blue butterfly habitat below 4 acres.
- Necessary emergency work will be done in a manner to minimize impacts to habitat. Upon completion of this work, the ROW will be restored to grade and seeded with lupine at a rate of 14 pounds per acre.

- A nine acre mitigation area will be planted to lupine at 14 pounds of seed per acre and be permanently protected for the duration of the permit. Additional species will be added to the seed mix which will provide nectar sources for the Karner blue butterfly. Approximately 15 acres will be seeded to lupine every other year until 60 acres of potential habitat are created.
- Habitat surveys will be performed every two years to document changes in lupine distribution. Disturbed or reseeded areas that do not recover in accordance with the monitoring plan included as an appendix to the HCP will be reseeded or retreated as needed to establish suitable lupine cover.
- Northern Indiana Public Service Company will conduct annual awareness training for their employees regarding the operation of the HCP.
- Signs will be posted within ROWs to alert personnel of the sensitive habitat.
- Tall growing vegetation and non-native species within ROWs will be treated with herbicide to increase lupine densities.

The treatment of unforeseen circumstances in the HCP (section 8.2) is consistent with the Service's Habitat Conservation Plan Assurances ("No Surprises") Rule, dated February 23, 1998.

### **3. Alternative actions to the taking the applicant considered and the reasons such alternatives are not proposed to be utilized**

The applicant considered two other alternatives during the planning process.

Alternative 1 - No Change from historic maintenance plan. Perform electric, gas, and water line construction, maintenance, and emergency work, and vegetation management at any time during the year, disregarding the life cycle or habitat of the Karner blue butterfly. This alternative would result in habitat destruction, with no provision for habitat improvements. This alternative would result in take and/or habitat destruction. Since take would not be minimized and mitigated to the maximum extent practicable, these activities would not be permitted, leaving Alternative 1 unacceptable.

Alternative 2 - No Action Alternative. The alternative of no action was considered. This alternative is not possible since the infrastructure to be maintained is already present. These facilities absolutely must be maintained in order for safe and reliable distribution and transmission of gas and electric energy and water. Consequently if vegetation management were not performed, woody species would shade the ROW and wild lupine populations would decline, and therefore would result in a loss of KBB.

### **4. Other measures that the Director may require as being necessary or appropriate for the purposes of the plan**

The Applicants developed the HCP in consultation with the Service. No public comments were received. The HCP includes measures the Service determined to be necessary and practicable to minimize and mitigate take. Therefore no other measures are identified as being necessary or appropriate for purposes of the plan.

### **III. ENVIRONMENTAL ASSESSMENT AND PUBLIC COMMENT - ANALYSIS AND FINDINGS**

The Service prepared the EAS for this ITP application. A Notice of Availability and request for public comment was published in the *Federal Register* on July 19, 2005, for the permit application, EAS and HCP. Public comment was accepted through August 18, 2005. The Service received no comments during the comment period.

### **IV. SECTION 10(a)(2)(B) PERMIT ISSUANCE CRITERIA - ANALYSIS AND FINDINGS**

#### **1. The taking will be incidental.**

The Service finds the take will be incidental to the otherwise lawful activities occurring as a result of the proposed activities by the Applicants.

#### **2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking.**

The Service finds the Applicants have developed an HCP pursuant to the requirements provided in the Act and its implementing regulations and have provided for mitigation and minimization of take to the full extent practicable. The “maximum extent practicable” concept consists of considering the economic objectives with the Applicants (reflected by the scope of the project and its design), a measurement of the subsequent impact imposed on the protected species, and to what degree the extent of mitigation and minimization measures offered in the HCP compensate for impact to the species. Minimization efforts do not take precedence over mitigation efforts or vice-versa. Minimization and mitigation can take many forms and any combination to address direct, indirect, and cumulative adverse effects on listed species. In this particular case, the level of incidental take is expected to be extremely low once measures of the HCP and permits are in place, and the Applicants have provided mitigation and minimization to offset the expected impacts to the Karner blue butterfly. The Service’s Biological Opinion described the incidental take expected to occur as a result of issuing this ITP.

#### **3. The applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided.**

Through execution of the Implementing Agreement, the Applicants ensure funding is available to meet their obligations under this Agreement, the Permits, and the HCP throughout the 25-year term of the HCP. The Service’s HCP Assurances (“No Surprises”) rule is discussed in the HCP and measures to address changed and unforeseen circumstances have been identified. Unforeseen circumstances would necessitate coordination between the Service and the Applicants. The Applicants have committed to a coordination process to address such circumstances. The Service has therefore determined the financial commitment, along with the willingness to address changed and unforeseen circumstances in a cooperative fashion, is sufficient to meet this criterion.

**4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.**

The Service has reviewed issuance of an ITP to the Applicants in accord with section 7 of the Act to cover activities associated with the proposed activities and HCP/Permit maintenance. As concluded in the Biological Opinion, the ITPs will not appreciably reduce the likelihood of survival and recovery of Karner blue butterfly.

**5. Additional measures as required by the Director of the Service will be implemented.**

The EAS and HCP have incorporated all elements necessary for issuance of the section 10(a)(1)(B) permits.

**6. The Director of the Service has received the necessary assurances that the plan will be implemented.**

The permits will be valid only if the minimization and mitigation measures have been carried out in accordance with the HCP and the terms and conditions of the permits. Failure to perform the obligation outlined by the conditions of the section 10(a)(1)(B) permits may be grounds for their suspension or revocation.

**V. GENERAL CRITERIA AND DISQUALIFYING FACTORS**

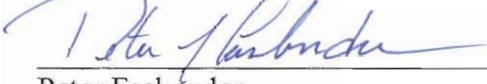
The Service has no evidence the permit applications should be denied on the basis of criteria and conditions set forth in 50 CFR § 13.21(b) and (c). The Applicants have met the criteria for the issuance of the permits and do not have any disqualifying factor that would prevent them from being issued under current regulations.

**VI. RECOMMENDATIONS ON ISSUANCE OF PERMIT**

Based on the findings of the Regional Office and the Bloomington, Indiana Field Office staff, and with respect to the ITP applications, HCP, EA, and biological opinion, we concur the issuance of the section 10(a)(1)(B) ITPs to the Northern Indiana Public Service Company and Indiana-American Water Company and the proposed *Habitat Conservation Plan for take of the Karner blue butterfly* is recommended.

  
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TJ Miller  
Program Manager, Endangered Species

  
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Date

  
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Peter Fasbender  
Regional HCP Coordinator

  
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Date