

Avian Protection



Avian Protection Plan

Black Hills Energy

South Dakota, Montana, Nebraska



BLACK HILLS ENERGY COMPANY PROCEDURE

Procedure Name: Avian Protection Plan	DATE ISSUED 2011-04-05	POLICY NO. E-01-01-02
Applies to: Black Hills Energy South Dakota, Montana, Nebraska Electric Operations	DATE EFFECTIVE 2011-04-05	PAGE NO. i
	DEPARTMENT Environmental	APPROVED

Avian Protection Plan – Black Hills Energy: South Dakota, Montana, Nebraska Electric Operations

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Revision History Change Log:

Date	Changes by	Changes made
2011-09-02	Joe Jenkins	Revisions made to USFWS permit requirements, clarification of terms, revised definitions
2015-04-09	Mike Pogany	Updated references to APLIC standards and contact information
2018-12-28	Joe Jenkins	Plan reviewed and revised to address corporate branding changes, and to include new contacts to agencies, field agents, and operations contacts. Wind energy siting and permitting strategies expanded and eagle permitting requirements for wind generations added. Avian incident tracking modified to remove the use of the BH Avian Incident Tracking System which was never fully developed or used. Since development, all records have been filed in the Environmental Services formal recordkeeping system.

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1. PURPOSE

The Company's Avian Protection Plan (APP or "Plan") for Black Hills Energy's South Dakota, Montana and Nebraska Operations provides guidance to mitigate the impact of company operations on protected bird species. Various federal treaties, acts, federal and state regulations and laws protect migratory birds, eagles and endangered species. These laws apply a strict liability approach to the "taking" of protected species, their parts, nests and habitat. Implementation of this Plan will reduce bird mortalities, incidents and negative interactions, and impacts to habitat. This Plan identifies actions needed to comply with legal requirements while continuing to provide the safe and reliable services provided by the company.

2. SCOPE

The Plan applies primarily to all Black Hills Energy (BHE) Electric Distribution, Transmission, and Generation Operations in South Dakota, Nebraska and Montana¹ which may impact protected bird species.

NOTE: A separate Plan covers BHE Electric Distribution and Transmission, Generation Operations in Wyoming that were part of the legacy Black Hills Energy electric operations.

3. RESPONSIBILITY

The personnel of the various South Dakota operations are responsible for implementing the Plan within their individual projects or systems.

Avian Protection Program Coordinator: The Avian Protection Program Coordinator (APPC) or designee is responsible for developing and documenting Program Standards, Procedures, and Practices, developing and implementing the Plan, communicating with regulatory agencies, and monitoring the implementation of the Plan.

Power Generation: Environmental personnel are responsible for managing aspects of the Plan including monitoring, incident investigation, reporting, and mitigation design and operational changes needed to appropriately reduce the risk of negative interactions with protected avian species.

Electrical Transmission/Distribution: Transmission/Distribution will delegate personnel who are responsible for managing all aspects of the Plan including monitoring, incident investigation, reporting, and mitigation design and operational changes needed to appropriately reduce the risk of negative interactions with protected avian species.

Environmental Services: Environmental Services (ES) personnel will assist operations to implement the plan including monitoring, incident investigation, reporting, and mitigation design and operational changes needed to appropriately reduce the risk of negative interactions with protected avian species.

¹ BHE's Nebraska and Montana Operations, are covered under this Plan since the small extent of operations in these states does not warrant coverage under separate state Plans.

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Electric Construction Standards Committees: The Company's electrical design standards committees (transmission, distribution) are responsible for the approval of electrical structure and electrical design modifications needed to meet Plan requirements.

4. DEFINITIONS

Active Nest – A nest that has eggs or young present at the time of an observation. A nest is considered inactive when eggs or young are not present, such as in the fall or winter, or if the nest is not used during breeding season. The term occupied nest is used synonymously.

APP – Avian Protection Plan

APPC – Avian Protection Program Coordinator which is a role assigned in the Environmental Services Department.

APP-SD - Company's Avian Protection Plan for its South Dakota operations.

BGEPA – the Bald and Golden Eagle Protection Act. The BGEPA prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagle or their body parts, nests, chicks or eggs, which includes collection, molestation, disturbance, or killing. The term "disturb" is defined as "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

ESA – Endangered Species Act. The Endangered Species Act protects plants and animals that are listed by the federal government as "endangered" or "threatened."

Inactive Nest – A nest that does not have eggs or young at the time of observation. Term is used synonymously with unoccupied nest.

Lek: A lek is a gathering of males, of certain animal species, for the purposes of competitive mating display. Leks assemble before and during the breeding.

MBTA – Migratory Bird Treaty Act. The MBTA prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven.

Migratory Bird – The definition of the migratory birds that are protected by federal law were identified through various conventions. Migratory birds for purposes of the Migratory Bird Treaty Act include those defined in the Convention of Mar. 4, 1972, concluded with Government of Japan and the Convention of Nov. 19, 1976, concluded with Union of Soviet Socialist Republics. 1966 - Pub. L. 89-669 inserted "(39 Stat. 1702)" and defined migratory birds to include those defined in the Treaty of Feb. 7, 1936 (50 Stat. 1311) with the United Mexican States.

The list of the Migratory Birds and bird species of concern identified can be found in Appendix D. The entire list of migratory birds can be found at: <http://migratorybirds.fws.gov>

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MFWP – Montana Fish, Wildlife and Parks, which is the wildlife regulatory agency in Montana.

Negative Interaction – a situation that could or has resulted in the taking of a bird protected by the MBTA, BGEPA, and or ESA.

NGPC – Nebraska Game and Parks Commission, which is the wildlife regulatory agency in Nebraska.

Occupied Nest – A nest with an incubating adult (sitting on eggs), or eggs or young present. Term is used synonymously with active nest. Nests may be occupied during the breeding season (approximately February through August).

Problem Nest – A nest that may cause electrocution and death to the birds, electrical outage, property damage, or otherwise interfere with safe and reliable power operations.

Raptors – Birds of prey with exceptionally keen eyesight, a sharp, hooked beak for tearing flesh, and strong grasping feet with large, sharp talons for killing and holding prey; includes eagles, hawks, falcons, owls, buteos, osprey, and vultures. Raptors frequently use power poles for perching or nesting.

Raptor Safe – A power line configuration designed to eliminate raptor electrocution by having sufficient spacing between phases and phase to ground which provides safe perching areas on the pole.

SDGFP – South Dakota Game Fish and Parks, which is the wildlife regulatory agency in South Dakota.

Take/Taking: As defined by 50 CFR 10.12, take means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue hunt, shoot, wound, kill, trap, capture, or collect.

Tended nest – Prior to egg-laying, birds construct or add materials to nests that they will occupy during the nesting season.

Threatened & Endangered Species – ESA-listed species and those that are threatened with extinction and protected by federal law. Specifically, an “endangered species” is one that is “in danger of extinction” throughout all or a significant portion of its range. A “threatened” species is one that is “likely to become endangered” within the foreseeable future”.

Unoccupied Nest – A nest that does not have eggs or young at the time of observation. Term is used synonymously with inactive nest.

USFWS – United States Fish and Wildlife Service, which is the regulatory agency that oversees the protection of wildlife and is a service under the Department of Interior.

- **Ecological Services**: This office can assist you with avoiding, minimizing and mitigating impacts to migratory birds, and may provide assistance in obtaining migratory bird permits from the Migratory Bird Permit Office.

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- Migratory Bird Permit Office, Denver, Colorado: This office provides information about migratory bird permits and issues permits when appropriate.
- Law Enforcement, South Dakota. Law enforcement will provide you with information as to how to avoid violations under the ESA, MBTA, and BGEPA. Mortalities and injuries should be reported to law enforcement. Eagle mortalities need to be reported within 24 hours.

PROCEDURE

5.1 Communication of the Avian Protection Plan (APP)

5.1.1 Communicating the Plan

The Plan will be communicated throughout affected company operations to assure that personnel are aware of the company's avian protection policy and procedures. The Plan will be communicated through formal training, periodic management reports, electrical standards committee meetings, and ongoing environmental and operational meetings.

5.1.2 Training

Training will be provided to all affected employees who may discover or investigate avian incidents, engineers responsible for the design of raptor safe structures, and operational personnel who may be responsible for mitigating incidents through operation and maintenance activities. Training will be provided as part of the initial communication of the plan and thereafter as often as needed to assure compliance with the plan. The training will include:

- Identification of protected and non-protected species.
- Review of applicable regulations including the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), the Endangered Species Act (ESA), and state regulations to ensure personnel are aware of the legal requirements and the potential liability associated with non-compliance.
- Bird biology and behavior related to interactions (collision or electrocution) with power structures including bird sizes, perching, nesting, hunting and feeding habits, as well as habitat preferences and flight path tendencies.
- Bird biology and behavior related to interactions with facility buildings and other structures that may provide perching, nesting, hunting or feeding habitats.
- Discussion of the state and federal agencies that may need to be contacted and how soon following the incident they should be contacted.
- Proper procedures to follow when an avian incident is encountered.
- Internal and external reporting requirements for all incidents. The use of GIS applications to track and map locations of avian incidents and nesting.
- Use of the US Fish and Wildlife Service (USFWS) Bird Fatality/Injury Reporting Program for incidents related to electrical systems.

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- A discussion regarding "High Use Areas" where high year-round and seasonal bird concentrations may occur.
- Emphasis is to be placed on specific examples and corrective actions that are operations specific. For example: Electric operations should discuss separation and insulation concepts and applications, perch preventers, substitute perches, and nest platforms; expectations for corrective actions on lines and equipment where mortalities have occurred; and circumstances where no meaningful remedial steps can be reasonably taken such as weather, unavoidable biological interactions, or other contributory factors.
- Use of additional training videos or other materials when available from the USFWS, the Avian Power Line Interaction Committee or the Edison Electric Institute, and other resources as identified.

5.1.3 External Communication of the APP

The APP will be provided upon request to federal and state agencies. A copy of this plan is available online on the Company's intranet site and available to all affected facilities.

5.2 Investigating Avian Incidents

Operations personnel will ensure that the causes of "negative interactions" are investigated and the implementation of mitigation or preventative measures are completed where needed. Appendix A provides a general flowchart of steps to take when incidents occur. Appendix C provides a list of company personnel, and state and federal contacts.

5.2.1 Identification of Dead or Injured Birds

Employees will immediately report to their supervisor and ES Coordinator all protected birds found dead or injured within the company's operation areas or right-of-ways.

5.2.2 Bird Handling Restrictions and Public Safety Considerations

Field personnel will not attempt to handle, capture, collect, move, or transport any injured or dead protected bird.

Safety Exception: If required to ensure public safety, the safety of company personnel, and/or its operations, equipment or electrical systems, a bird may be moved away from a structure or piece of electrical equipment provided the proper personnel and agencies are notified as soon as possible after removal.

USFWS Authorization: Specific permission from an authorized agent of the USFWS is required to transport, collect, or capture a protected bird or eggs. Injured birds should only be handled by the USFWS, the State agency or a local rehabilitator (see Appendix C, Contact List) who has the appropriate authorization to handle protected birds.

5.2.3 Transportation of Injured Birds

To facilitate transportation of all injured birds to a rehabilitator, call the FWS Law Enforcement or Ecological Services Office to report the injury. Per

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communication with the FWS, BHC has been given permission to transport the bird to one of the listed rehabilitators as soon as possible. Contact the selected rehabilitator to ensure they will be able to receive and have capacity to care for the injured bird.

After the injured bird is transported to the rehabilitator, provide documentation to FWS Law Enforcement or Ecological Services Office, preferably by email. Documentation should include:

1. Who found the bird,
2. When and where the bird was found,
3. The date and time the Service was notified,
4. Suspected cause of injury and bird species involved,
5. Type and severity of injury,
6. Who transported the bird,
7. Name of the rehabilitator, and
8. When it arrived at the rehabilitation center.

5.2.4 Photographic Documentation

Whenever feasible, the incident investigator will take pictures sufficient to support the findings of the investigation. Take photos of the bird and it's location as initially found and the surrounding area. If electric systems are involved, the structure and any electrical equipment involved or suspected to be involved; the line including other structures to show that similar conditions exist or not. If feasible, take photos from above and below the equipment and top of structure.

5.2.5 Field Report Form

When obtaining information related to a negative interaction or nesting situation, use the Field Report Form available on the ES MyBHC Avian protection webpage. Provide as much information as possible to facilitate communication with agencies regarding the incident.

5.3 Tracking, Monitoring, and Reporting Negative Interactions and Corrective Actions

The Company will track information about "negative interactions" between protected birds and Company facilities.

5.3.1 USFWS Bird Fatality/Injury Reporting Program

Responsible personnel will report all negative interactions involving the fatality of any protected bird species associated with electrical systems to the USFWS through an online program available at <https://birdreport.fws.gov> and/or report directly to a field agent as requested. This reporting program also provides a clearinghouse of information for the electric utility industry to mitigate the impact of electrical systems in the loss of birds.

This program is ONLY applicable to reporting negative avian interactions from electric operations.

5.3.1 Avian Incident Tracking and Recordkeeping

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ES will administer the tracking system. Operations personnel or ES will document all incidents, record investigation findings and document actions taken to mitigate future impacts. All documents will be filed in the ES records system.

5.4 Evaluation of Avian High Use Areas

Evaluations of company territory, operations and facilities for high bird use areas may be performed to minimize impacts. Evaluations may include scientific studies and literature, breeding bird surveys, winter bird counts, observations and other relevant information. The evaluations may be used to identify areas where mitigation efforts can reduce negative interactions before they occur. The APPC or designee will be responsible for obtaining evaluations as warranted.

5.5 Nest Management

Company personnel will ensure that active and inactive nests are properly managed and permits are obtained from the USFWS before any action is taken. Any nest, active or inactive, that is moved by company personnel will be documented in the ES records system. Impacts to existing nest sites during construction of new projects or systems will be evaluated.

5.5.1 Active Nests

Active nests of protected bird species are regulated under the Migratory Bird Treaty Act. Moving active nests requires approval from USFWS, notification to State wildlife agencies, and has to be completed under permits issued by the USFWS. ES can assist with communications and obtaining permits, if needed.

5.5.2 Tended Nests

Although only active/occupied nests of species other than eagles are protected under the MBTA, awareness of tended nests on or near company property provides time to address the need for nest management action before eggs or hatchlings are present. The presence of eggs or hatchlings reduce the options and increase the potential for negative interactions.

5.5.3 Inactive Nests

Except for eagle nests, unoccupied nests that need to be removed for public safety reasons, may be removed without first reporting to the USFWS. Note that many bird species will continue to use the same location for nesting year after year. Annually, a review of locations known to be nesting sites should be inspected for nesting activity. If activity is identified, ES should be contacted immediately.

Eagles may reuse nests for decades and they have been granted special status under the Bald and Golden Eagle Protection Act. All operations will consult with ES before moving an eagle nest. Permits will have to be obtained from the USFWS before an active or inactive eagle nest can be moved. However, if there is a clear, imminent danger posed to workers, the provision of safe and reliable electrical service, or other operations, a nest may be moved, provided that the USFWS is consulted prior to the move and permits obtained for the incident after the fact.

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5.6 Permit Requirements

The USFWS no longer issues permits for the removal of live or dead birds. Permits may be required to move nests, eggs or young. The permit process generally takes a substantial amount of time which may exacerbate the situation so every attempt should be made to obtain immediate verbal permission from an agency to rectify situations which are within their authorization.

Operations is responsible to report incidents immediately to ES. Operations and ES will then coordinate and provide the information to the USFWS and to the State agency, file all records in the ES records system, and obtain permits, if required.

The U.S. Fish and Wildlife Service (FWS) has developed the Eagle Conservation Plan Guidance (ECPG). This document provides specific in-depth guidance for conserving bald and golden eagles in the course of siting, constructing, and operating wind energy facilities. The ECPG guidance supplements the Land-Based Wind Energy Guidelines. Associated with the ECPG, the FWS has developed a, Eagle Take Permit that authorizes the take of bald and golden eagles when the take is associated with an otherwise lawful activity if there is a significant potential that eagles could have negative interaction with the wind energy facilities. The Company will apply for eagle take permits whenever deemed appropriate based on assessments of the impact of any new facility prior to its construction. See §5.7.5 for additional information for the use of eagle take permits associated with the construction of wind generation facilities.

Agency contacts are provided in Appendix C of this APP.

5.6.1 US Fish and Wildlife (USFWS) Permits

Local USFWS personnel should be contacted when a mortality, injury or nesting incident occurs. For mortalities the USFWS can usually give verbal authorization to remove and properly dispose of a carcass but they may also want to investigate the situation. For injured birds the USFWS may also give verbal authorization to remove and transport a bird to a rehabilitator. For certain injured bird species such as raptors or T&E the agency may need to handle those birds themselves or request the State Agency or a rehabilitator retrieve the birds.

When verbal approval is given or the incident is referred to a State agency or authorized rehabilitator a permit should not be needed. For nest starts or unoccupied nests of all species except for eagles and T&E a permit is not required from the USFWS to remove those nests as long as eggs and young are not present. A USFWS permit is generally required to remove all bald or golden eagle nests (active or inactive) and all active nests of other species where eggs or young are present.

5.6.2 **State Agencies: South Dakota Game, Fish and Parks (SDGFP), Montana Fish, Wildlife and Parks (MFWP), Nebraska Game and Parks Commission (NGPC)**

All coordination with State agencies follows notification to the USFWS.

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State Wildlife agencies in South Dakota, Montana and Nebraska do not require that a permit be obtained prior to handling dead or injured birds, and/or their parts. Local agency personnel should be contacted when there is a mortality or injury. For mortalities, the State agency may give verbal authorization to remove and properly dispose of a carcass.

For injured birds, the State agency may give verbal authorization to remove and transport a bird to a rehabilitator. For certain injured bird species such as raptors or threatened or endangered (T&E), the State agency may need to handle those birds directly.

Contact the local Conservation Officer for new nest starts where eggs or young are not present and have never been produced, and for existing nests where eggs or young are present or have been produced in the past. The State agency may give approval and/or instruction on how to address the nest.

Permits are not required to move nests in Montana or South Dakota; however a Scientific and Education Collection Permit from the Nebraska Game and Parks Commission is required to move nests in Nebraska.

5.7 Avian Protection Measures for Company Operations

5.7.1 Electric Construction Design Standards

The Company's Electric Construction Design Standards Committee has developed Electrical Construction Standards for both transmission and distribution which incorporate the following guidance in addressing avian protection measures. These Company Standards are available on the Company's Engineering intranet webpage.

- Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006, published by the Avian Power Line Interaction Committee (APLIC), the Edison Electric Institute and the California Energy Commission. 2006. Washington, D.C. and Sacramento, CA.
- Reducing Bird Collisions with Power Lines - The State of the Art in 2012 Edison Electric Institute, and APLIC, Washington, D.C.

5.7.2 Avian Protection Measures for Electrical Structures

The Company's electric design standards will be used for each of the following situations.

Siting New Electrical Lines: Avian protection measures will be taken into consideration when siting new electrical lines.

New Line Construction: Avian-safe designs will be employed for all new construction. In areas with known populations of raptors or other birds of concern, new lines will be designed with adequate separations for birds.²

² Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006, published by the Avian Power Line Interaction Committee (APLIC), the Edison Electric Institute and the California Energy Commission. 2006. Washington, D.C. and Sacramento, CA. Page 60

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Retrofit of Existing Lines: Where studies or avian incidents have deemed necessary, lines will be rebuilt or retrofitted to avian-safe standards.

Isolated incidents: If a death or injury of a bird is due to electrocution, the structure will be retrofitted to avian safe standards as soon as feasible.

5.7.3 Avian Protection Measures for Other Structures and Facilities

Every effort will be made to construct facilities and structures at generation and other facilities in such a manner as to minimize impact to protected avian species. Where feasible new facilities are typically designed and constructed to minimize access to protected species; and netting or mesh will be placed over containers, pits, tanks, lagoons and ponds to prevent access to oil, condensate, and other hydrocarbons, and hazardous or toxic substances.

Isolated incidents: If a death or injury of a bird is discovered, the structure, or other feature will be evaluated and repaired or retrofitted to avian safe standards as soon as feasible.

5.7.4 Avian Protection Measures for Construction Sites

Every effort will be made to keep construction sites clean and free of debris and contaminants, including oil and other hydrocarbons, and hazardous or toxic substances. If a death or injury of a bird is discovered, the structure, container, tank, emission stack, or other feature will be evaluated and repaired or retrofitted to avian safe standards as soon as feasible.

5.8 Periodic Inspections

The company performs a number of operational and maintenance inspections of facilities on a regularly scheduled basis (monthly, annually). These inspections are documented and include awareness of avian issues and provide for a random check of facilities. Employees finding evidence of negative interactions during these inspections are required to inform ES when such evidence is encountered.

5.9 Assessments

5.9.1 Annual Assessment

The APPC will compile an annual report of all incidents including fatalities, non-fatality and nesting incidents based upon information filed in the ES records system. The APPC will distribute the report to affected operations for review.

5.9.2 Electric Systems (USFWS Reporting Database)

The USFWS Bird Fatality/Injury Reporting Program at <http://birdreport.fws.gov> provides report development processes for all incidents involving the fatality of a protected bird. A report of this information to USFWS is not planned since this information is publically available.

6. RECORDS

- **USFWS Bird Fatality/Injury Reporting Program** at <http://birdreport.fws.gov>.
- **Black Hills Environmental Services Records**

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7. REFERENCES

7.1 Regulatory References

- 7.1.1 Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 to 668d
- 7.1.2 Migratory Bird Treaty Act, 16 U.S.C. §§ 703 to 712
- 7.1.3 Endangered Species Act, 16 U.S.C. §§ 1531 to 1544
- 7.1.4 Montana Wildlife Regulations MCA, Title 87, Ch. 5
- 7.1.5 Nebraska Wildlife Regulations NE Proposed Regulations No. 163-4 Regulations Governing Wildlife
- 7.1.6 South Dakota Regulations Title 41:10:02:01-19 Dept. of Game Fish and Parks

7.2 Technical References

7.2.1 Construction Standards

- Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006, published by the Avian Power Line Interaction Committee (APLIC), the Edison Electric Institute and the California Energy Commission. 2006. Washington, D.C. and Sacramento, CA.
- Reducing Bird Collisions with Power Lines - The State of the Art in 2012 Edison Electric Institute, and APLIC, Washington, D.C.
- Avian Protection Plan Guidelines, published by the Edison Electric Institute's Avian Power Line Interaction Committee and the US Fish and Wildlife Service. 2005.

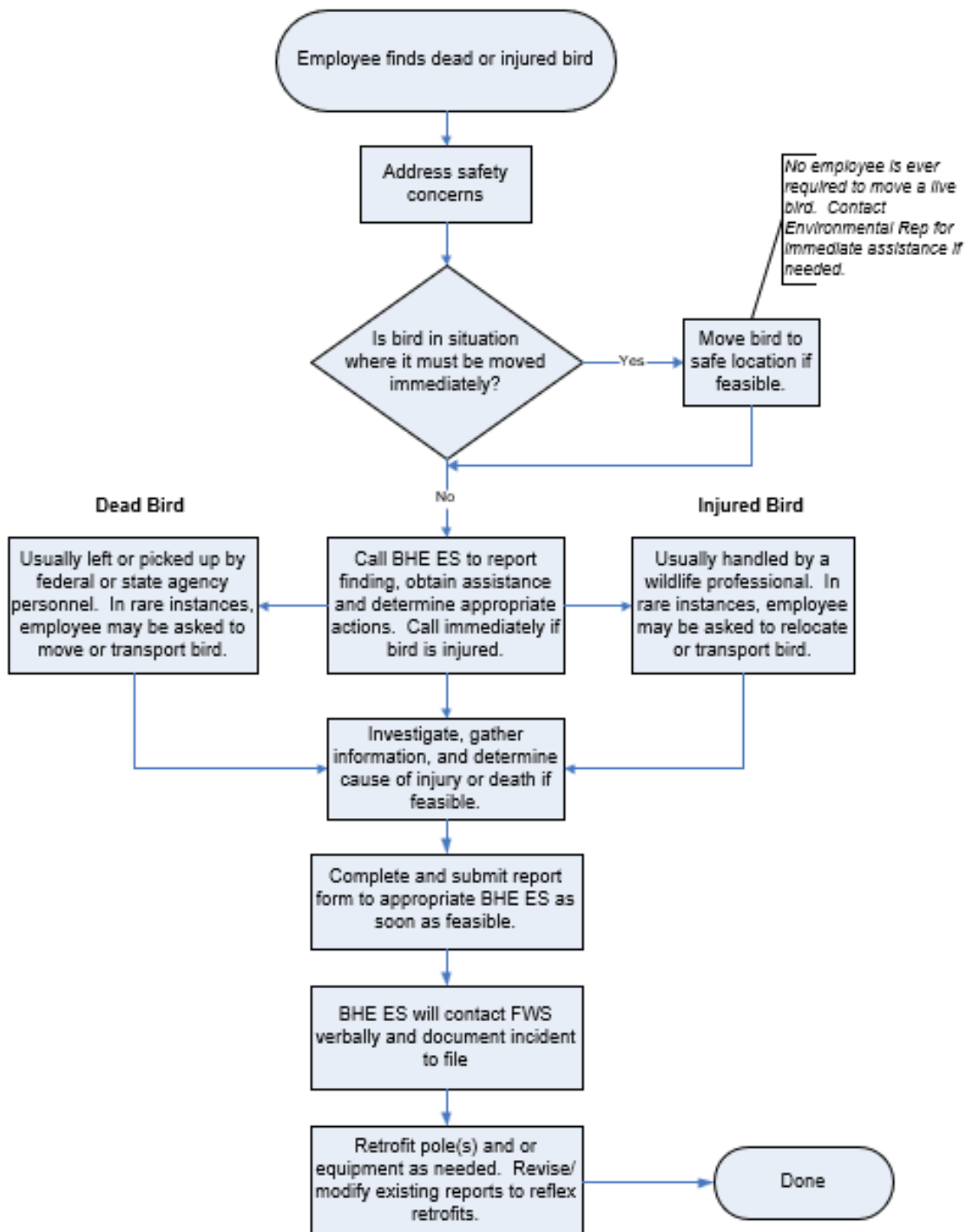
7.2.2 Other References

- Peterson Field Guide to Birds of Western North America. 2010. Fourth Edition. Houghton Mifflin Company. Boston, MA. Available from Amazon Books.
- Migratory Bird List: <http://migratorybirds.fws.gov/>
Birds common to South Dakota that are not protected under migratory bird laws include the house sparrow, rock dove or pigeon, starling and Eurasian collard dove.
- Guidance on active nesting buffers: See Appendix B

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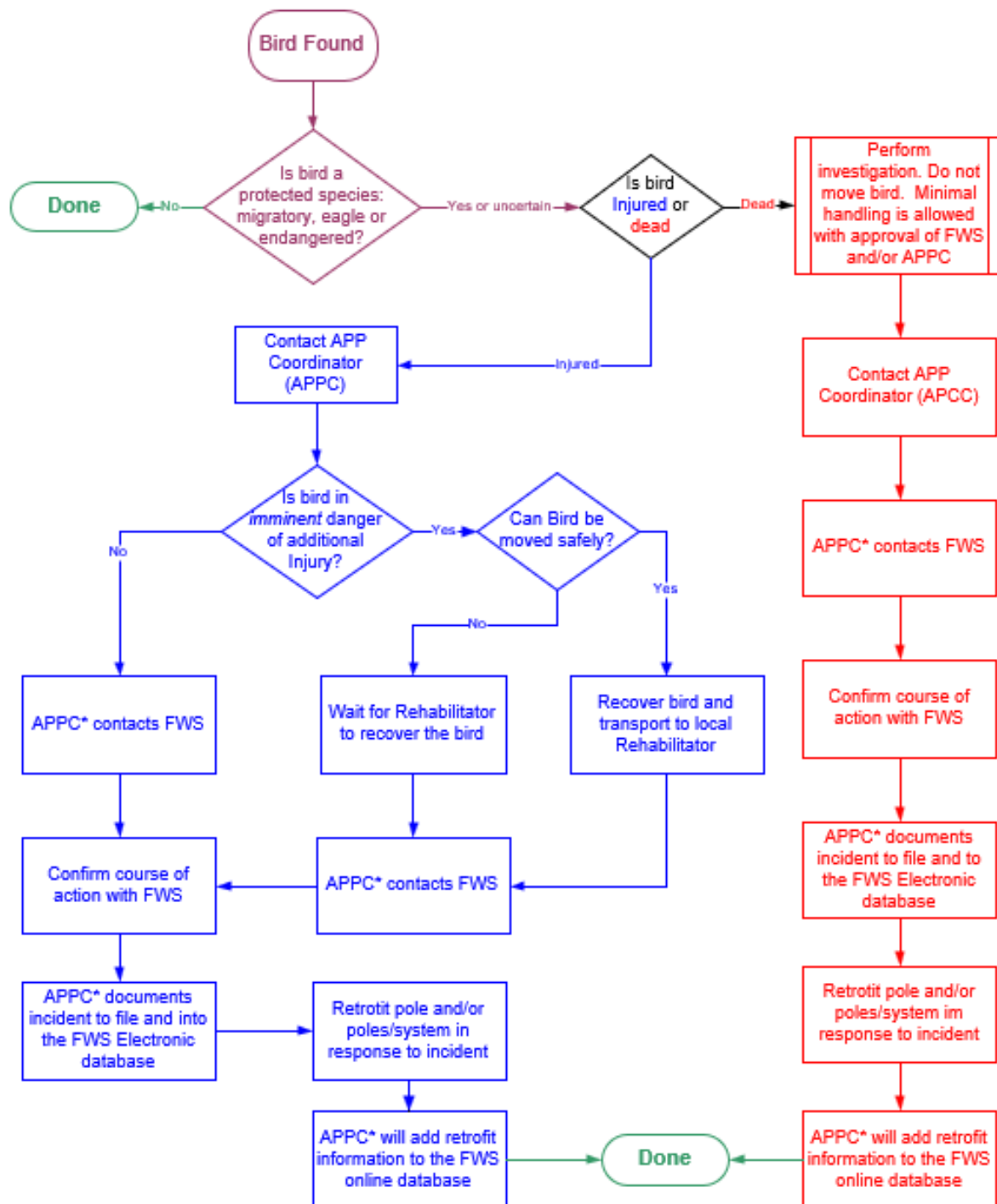
APPENDIX A: RESPONSE AND REPORTING FLOWCHARTS

Response to Finding a Dead or Injured Bird



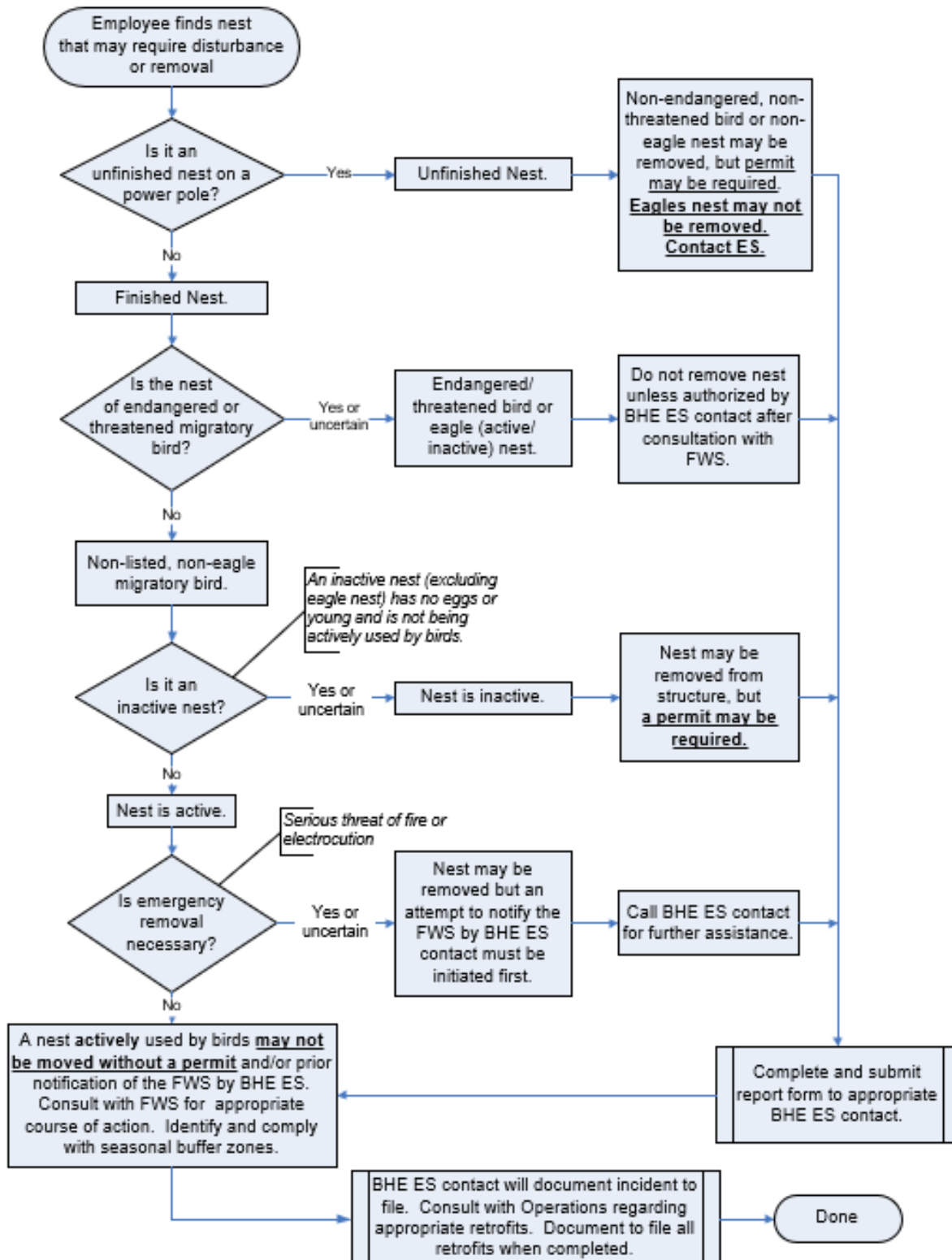
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Brid Reporting Detailed Flow Chart



APP = Avian Protection Plan, APPC* = Avian Protection Plan Coordinator and/or designee,
FWS = Fish and Wildlife Service

Response to Finding a Nest



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APPENDIX B: US FISH AND WILDLIFE PROTECTIONS FOR RAPTORS/SEASONAL BUFFER ZONES³

Raptors, or birds of prey, and the majority of other birds in the United States are protected by the [Migratory Bird Treaty Act](#), 16 U.S.C. 703 (MBTA). A complete list of migratory bird species can be found in the Code of Federal Regulations at [50 CFR 10.13](#). Eagles are also protected by the [Bald and Golden Eagle Protection Act](#), 16 U.S.C. 668 (Eagle Act).

The MBTA protects migratory birds, eggs and nests from possession, sale, purchase, barter, transport, import, export, and take. The regulatory definition of take, defined in [50 CFR 10.12](#), means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to hunt, shoot, wound, kill, trap, capture, or collect a migratory bird. Activities that result in the unpermitted take (e.g., result in death, possession, collection, or wounding) of migratory birds or their eggs are illegal and fully prosecutable under the MBTA. Removal or destruction of active nests (i.e., nests that contain eggs or young), or causing abandonment of an active nest, could constitute a violation of the MBTA, the Eagle Act, or both statutes. Removal of any active migratory bird nest or any structure that contains an active nest (e.g., tree) where such removal results in take is prohibited. Therefore, if nesting migratory birds are present on or near a project area, project timing is an important consideration during project planning. As discussed below, the Eagle Act provides additional protections for bald and golden eagles and their nests. For additional information concerning nests and protections under the MBTA, please see the U.S. Fish and Wildlife Service's (Service) [Migratory Bird Permit Memorandum, MBMP-2](#).

The Service's Ecological Services Field Offices works to raise public awareness about the possible occurrence of birds in proposed project areas and the risk of violating the MBTA, while also providing guidance to minimize the likelihood that take will occur. We encourage you to coordinate with our office before conducting actions that could lead to the take of a migratory bird, their young, eggs, or active nests (e.g., construction or other activity in the vicinity of a nest that could result in a take). If nest manipulation is proposed for a project, the project proponent should also contact the Service's Migratory Bird Office in Denver at 303-236-8171 to see if a permit can be issued. Permits generally are not issued for an active nest of any migratory bird species, unless removal of the nest is necessary for human health and safety. If a permit cannot be issued, the project may need to be modified to ensure take of migratory birds, their young or eggs will not occur.

For infrastructure (or facilities) that have potential to cause direct avian mortality (e.g., wind turbines, guyed towers, airports, wastewater disposal facilities, transmission lines), we recommend locating structures away from high avian-use areas such as those used for nesting, foraging, roosting or migrating, and the travel zones between high-use areas. If the wildlife survey data available for the proposed project area and vicinity do not provide the detail needed to identify normal bird habitat use and movements, we recommend collecting that information prior to determining locations for any infrastructure that may create an increased potential for avian mortalities. We also recommend contacting the Service's Ecological Services office for project-specific recommendations.

³ http://www.fws.gov/Wyominges/Pages/Species/Species_SpeciesConcern/Raptors.html

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Additional Protections for Eagles

The Eagle Act protections include provisions not included in the MBTA, such as the protection of unoccupied nests and a prohibition on disturbing eagles. Specifically, the Eagle Act prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagle or their body parts, nests, chicks or eggs, which includes collection, possession, molestation, disturbance, or killing. The term “disturb” is defined as “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” ([50 CFR 22.3](#) and see also [72 FR 31132](#)).

The Eagle Act includes limited exceptions to its prohibitions through a permitting process. The Service has issued regulations concerning the permit procedures for exceptions to the Eagle Act’s prohibitions ([74 FR 46836](#)), including permits to take golden eagle nests which interfere with resource development or recovery operations ([50 CFR 22.25](#)). The regulations identify the conditions under which a permit may be issued (i.e., status of eagles, need for action), application requirements, and other issues (e.g., mitigation, monitoring) necessary in order for a permit to be issued.

For additional recommendations specific to Bald Eagles please see our [Bald Eagle information web page](#).

Recommended Steps for Addressing Raptors in Project Planning

Using the following steps in early project planning, agencies and proponents can more easily minimize impacts to raptors, streamline planning and permitting processes, and incorporate measures into an adaptive management program:

1. Coordinate with appropriate Service offices, State agencies, Tribal governments, and land-management agencies at the earliest stage of project planning.
2. Identify species and distribution of raptors occurring within the project area by searching existing data sources (e.g., State agencies, Federal land-management agencies) and by conducting on-site surveys.
3. Plan and schedule short-term and long-term project disturbances and human-related activities to avoid raptor nesting and roosting areas, particularly during crucial breeding and wintering periods
4. Determine location and distribution of important raptor habitat, nests, roost sites, migration zones and, if feasible, available prey base in the project impact area.
5. Document the type, extent, timing, and duration of raptor activity in important use areas to establish a baseline of raptor activity.
6. Ascertain the type, extent, timing, and duration of development or human activities proposed to occur, and the extent to which this differs from baseline conditions.
7. Consider cumulative effects to raptors from proposed projects when added to past, present, and reasonably foreseeable actions. Ensure that project mitigation adequately addresses cumulative effects to raptors.
8. Minimize loss of raptor habitats and avoid long-term habitat degradation. Mitigate for unavoidable losses of high-valued raptor habitats, including (but not limited to) nesting, roosting, migration, and foraging areas.

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9. Monitor and document the status of raptor populations and, if feasible, their prey base post project completion, and evaluate the success of mitigation efforts.
10. Document meaningful data and evaluations in a format that can be readily shared and incorporated into wildlife databases (contact the Service's Ecological Services office for details).

Protection of nesting, wintering (including communal roost sites), and foraging activities is considered essential to conserving raptors. In order to promote the conservation of migratory bird populations and their habitats, Federal agencies should implement those strategies directed by [Executive Order 13186, "Responsibilities of Federal Agencies To Protect Migratory Birds" \(66 FR 3853\)](#).

Recommended Seasonal and Spatial Buffers to Protect Nesting Raptors

Because many raptors are particularly sensitive to disturbance (that may result in take) during the breeding season, we recommend implementing spatial and seasonal buffer zones to protect individual nest sites/territories (Table 1). The buffers serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest trees and provide for alternative or replacement nest trees. The size and shape of effective buffers vary depending on the topography and other ecological characteristics surrounding the nest site. In open areas where there is little or no forested or topographical separation, distance alone must serve as the buffer. Adequate nesting buffers will help ensure activities do not take breeding birds, their young or eggs. For optimal conservation benefit, we recommend that no temporary or permanent surface occupancy occur within species-specific spatial buffer zones. For some activities with very substantial auditory impacts (e.g., seismic exploration and blasting) or visual impacts (e.g., tall drilling rig), a larger buffer than listed in Table 1 may be necessary, please contact the Service's Ecological Services office for project specific recommendations on adequate buffers.

As discussed above, for infrastructure that may create an increased potential for raptor mortalities, the spatial buffers listed in Table 1 may not be sufficient to reduce the incidence of raptor mortalities (for example, if a wind turbine is placed outside a nest disturbance buffer, but inadvertently still within areas of normal daily or migratory bird movements); therefore, please contact the Service's Ecological Services office for project specific recommendations on adequate buffers.

Buffer recommendations may be modified on a site-specific or project-specific basis based on field observations and local conditions. The sensitivity of raptors to disturbance may be dependent on local topography, density of vegetation, and intensity of activities. Additionally, individual birds may be habituated to varying levels of disturbance and human-induced impacts. Modification of protective buffer recommendations may be considered where biologically supported and developed in coordination with the Service's Ecological Services Field Office.

Because raptor nests are often initially not identified to species, we first recommend a generic raptor nest seasonal buffer guideline of January 15th – August 15th. Similarly, for spatial nesting buffers, until the nesting species has been confirmed, we recommend applying a 1-mile spatial buffer around the nest. Once the raptor species is confirmed, we then make species-specific and site-specific recommendations on seasonal and spatial buffers (Table 1).

Activities should not occur within the spatial/seasonal buffer of any nest (occupied or unoccupied) when raptors are in the process of courtship and nest site selection. Long-term land-use activities

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and human-use activities should not occur within the species-specific spatial buffer of occupied nests. Short-term land use and human-use activities proposed to occur within the spatial buffer of an occupied nest should only proceed during the seasonal buffer after coordination with the Service, State, and Tribal wildlife resources management agencies, and/or land-management agency biologists. If, after coordination, it is determined that due to human or environmental safety or otherwise unavoidable factors, activities require temporary incursions within the spatial and seasonal buffers, those activities should be planned to minimize impacts and monitored to determine whether impacts to birds occurred. Mitigation for habitat loss or degradation should be identified and planned in coordination with applicable agencies.

Please contact the Service's Ecological Services Field Office if you have any questions regarding the status of the bald eagle, permit requirements, or if you require technical assistance regarding the MBTA, Eagle Act, or the above recommendations. The recommended spatial and seasonal buffers are voluntary (unless made a condition of permit or license) and are not regulatory, and they do not supersede provisions of the MBTA, Eagle Act, [Migratory Bird Permit Memorandum \(MBMP-2\)](#), and Endangered Species Act. Assessing legal compliance with the MBTA or the Eagle Act and the implementing regulations is ultimately the authority and responsibility of the Service's law enforcement personnel. Our recommendations also do not supersede Federal, State, local, or Tribal regulations or permit conditions that may be more restrictive.

Table 1. US Fish and Wildlife Service Recommended Spatial and Seasonal Buffers for Breeding Raptors for construction projects, <u>excluding</u> wind energy.		
Raptors of Conservation Concern (see below for more information)		
Common Name	Spatial buffer (miles)	Seasonal buffer
Golden Eagle	0.5	January 15 - July 31
Ferruginous Hawk	1	March 15 - July 31
Swainson's Hawk	0.25	April 1 - August 31
Bald Eagle	See Bald Eagle information page	
Prairie Falcon	0.5	March 1 - August 15
Peregrine Falcon	0.5	March 1 - August 15
Short-eared Owl	0.25	March 15- August 1
Burrowing Owl	0.25	April 1 – September 15
Northern Goshawk	0.5	April 1 - August 15

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Table 1. US Fish and Wildlife Service Recommended Spatial and Seasonal Buffers for Breeding Raptors for construction projects, excluding wind energy.

Additional Raptors		
Common Name	Spatial buffer (miles)	Seasonal buffer
Osprey	0.25	April 1 - August 31
Cooper's Hawk	0.25	March 15 – August 31
Sharp-shinned Hawk	0.25	March 15 – August 31
Red-tailed Hawk	0.25	February 1 – August 15
Rough-legged Hawk (winter resident only)	----	----
Northern Harrier	0.25	April 1 - August 15
Merlin	0.5	April 1 - August 15
American Kestrel	0.125	April 1 – August 15
Common Barn Owl	0.125	February 1 – September 15
Northern Saw-whet Owl	0.25	March 1 - August 31
Boreal Owl	0.25	February 1 – July 31
Long-eared Owl	0.25	February 1 – August 15
Great Horned Owl	0.125	December 1 – September 31
Northern Pygmy-Owl	0.25	April 1 – August 1
Eastern Screech -owl	0.125	March 1 – August 15
Western Screech-owl	0.125	March 1 – August 15
Great Gray Owl	0.25	March 15 – August 31

Bald Eagles: When the proposed infrastructure and facilities do not pose an increased risk of direct mortality, we recommend using the following general guidelines in order to avoid disturbing eagles and adequately protecting their habitat:

1. Conduct surveys within 0.5 mile of proposed activity for eagle nests and/or roosts during the appropriate time of year. Contact the Service's Ecological Services Field Office if your project will occur within 0.5 mile of a known nest or roost to determine the potential impact of your activity to nesting and/or roosting bald eagles.
2. Avoid project-related disturbance and habitat alteration within 0.5-mile of bald eagle nests from the period of early courtship to post-fledging of chicks (January 1 through August 15).
3. Avoid disturbance within 0.5 mile of communal winter roosts from November 1 to April 1.
4. Avoid construction of above-ground structures within 0.5-mile of bald eagle nest sites and communal winter roost sites. Below ground structures (e.g., pipelines, buried power lines, fiber optic lines) may be sited closer as long as construction occurs outside of the active nesting or roosting season and will not result in the loss of alternate nest sites or roost trees.

A protective buffer for foraging areas (i.e., a linear length of river) will also be needed if the proposed activity may preclude use of foraging areas (e.g., extensive human activities on or near the water).

In South Dakota, Montana and Nebraska, the nesting season occurs from February 1 to August 15 and bald eagle nest buffers should receive full implementation during this time period. For some

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activities (construction, seismic exploration, blasting, and timber harvest), a larger buffer around the nest may be necessary.

Sensitivity to disturbance by roosting and nesting bald eagles may vary between individual eagles based on topography, density of vegetation, and intensity of activities. Modification of protective buffer recommendations may be considered where biologically supported and developed in coordination with the Service's Ecological Services Field Office.

Raptors of Conservation Concern

The Service's [Birds of Conservation Concern \(2008\)](#) report identifies "species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing" under the Endangered Species Act (16 U.S.C 1531 et seq.). This report is intended to stimulate coordinated and proactive conservation actions among Federal, State, and private partners.

Project planners are encouraged to develop and implement protective measures for the Birds of Conservation Concern as well as other high-priority species identified in State Conservation Plans.

Additional Planning Resources

[Avian Power Line Interaction Committee \(APLIC\). 2006. Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006. Edison Electric Institute, APLIC, and the California Energy Commission. Washington, D.C. and Sacramento, CA.](#)

[Edison Electric Institute and the Raptor Research Foundation. 1996. Suggested Practices for Raptor Protection on Power Lines - The State of the Art in 1996. Washington, D.C.](#)

[Edison Electric Institute's Avian Power Line Interaction Committee and U.S. Fish and Wildlife Service. 2005. Avian Protection Plan Guidelines.](#)

[Edison Electric Institute and the Raptor Research Foundation. 1994. Mitigating Bird Collisions with Power Lines - The State of the Art in 1994. Washington, D.C.](#)

[U.S. Fish and Wildlife Service. 2000. Siting, Construction, Operation and Decommissioning of Communications Towers and Tower Site Evaluation Form \(Directors Memorandum September 14, 2000\), Arlington, Virginia.](#)

[U.S. Fish and Wildlife Service. 2007. National Bald Eagle Management Guidelines. United States Department of Interior, Fish and Wildlife Service, Arlington, Virginia. 23 pp.](#)

[South Dakota Dept. of Game Fish and Parks Internet Link to Threatened and Endangered or Rare Species](#)

[South Dakota All Bird Conservation Plan Internet Link](#)

[Montana Fish Wildlife and Parks website internet link for Species of Concern](#)

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[Montana National Heritage Program Animal Species of Concern Internet link](#)

[Nebraska Game and Parks website Internet link](#)

[Wyoming Game, Fish and Parks Internet Link](#)

References

[50 CFR 10.12 – Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 10--General Provisions.](#)

[50 CFR 10.13– Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 10--General Provisions.](#)

[50 CFR 22.3 – Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 22—Eagle Permits.](#)

[50 CFR 22.25– Code of Federal Regulations. Title 50--Wildlife and Fisheries, Chapter I--United States Fish and Wildlife Service, Department of the Interior, Part 22—Eagle Permits.](#)

[66 FR 3853 - Presidential Documents. Executive Order 13186 of January 10, 2001. Responsibilities of Federal Agencies To Protect Migratory Birds. Federal Register, January 17, 2001.](#)

[72 FR 31132 - Protection of Eagles; Definition of “Disturb”. Final Rule. Federal Register, June 5, 2007.](#)

[74 FR 46836 - Eagle Permits; Take Necessary To Protect Interests in Particular Localities. Final Rule. Federal Register, September 11, 2009.](#)

[U.S. Fish and Wildlife Service. 2003. Migratory Bird Permit Memorandum, MBMP-2, Nest Destruction \(Directors Memorandum April 15, 2003\), Washington, D.C.](#)

[U.S. Fish and Wildlife Service. 2008. Birds of Conservation Concern 2008. United States Department of Interior, Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, Virginia. 85 pp.](#)

Last updated: July 1, 2010

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APPENDIX C: CONTACTS (NAMES AND PHONE NUMBERS AS OF July 2011.)

BLACK HILLS ENERGY

Avian Protection Plan Coordinator (APPC)

Nathan Groh, Office 307-778-2115, Cell 402-660-3232

Environmental Services

Shannon Pollmiller, Office 605-399-5121, Cell 719-323-1729

Black Hills Generation

Jerry Likewise, Supervisor O&M, Ben French Plant Ops, Cell 307-757-3033

Black Hills Energy – Electric Distribution and Transmission

Ken Meirose, Ops Manager, Black Hills Region, Office 605-206-2968, Cell 605-390-6731

Mike Pogany, Ops Manager, Rapid City Area, Office 605-721-2137, Cell 605-390-3657

Dan Kline, Director Transmission & Engineering, Office 605-721-1396, Cell 515-491-3498

US FISH AND WILDLIFE SERVICE

Contact the Special Agent (SA) listed for all mortalities and injuries, contact the SA and Ecological Services for all nesting situations.

South Dakota

Rich Grosz, Resident Agent-in-Charge (ND/SD), 3425 Miriam Dr., Bismark, ND 58501, 702-355-8525

Brad Merrill, Special Agent, 28563 Powerhouse Rd. Pierre, SD 57501, 605-224-9045, Cell 605-280-1712, Brad_Merrill@fws.gov

Matt Schwarz, Ecological Services, 420 S. Garfield Ave. Ste. 400, Pierre, SD 57501, 605-224-8693 x232, Matt_Schwarz@fws.gov

Montana

Terry Thibeault, Resident Agent in Charge (MT/WY), 2900 Fourth Avenue North, Suite 300, Billings, MT, 59101, 406-247-7355, Cell 406-839-1764; Terence_Thibeault@fws.gov – NOTE email goes to cell phone (BB)

David Rouse Ecological Services, 585 Shepard Way, Helena, MT 59601 406-449-5225 x211, Davis_Rouse@fws.gov

Karen Nelson, Ecological Services, 585 Shepard Way, Helena, MT 59601 406-449-5225 x210, Karen_Nelson@fws.gov

Nebraska

John Brooks, Resident Agent-in-Charge (KS/NE), 1712 N. Nelson Dr., Unit A, Derby, KS 67037, 316-788-4474

Mike Damico, Special Agent, P.O. Box 1086, North Platte, NE 69103, 308-534-0925, Cell 308-530-9553, Mike_Damico@fws.gov

Robert Harms, Ecological Services, 203 W Second St., Fed. Bldg., 2nd Floor, Grand Island, NE 68801, (308) 382-6468 ext: 208, robert_harms@fws.gov

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STATE AGENCIES

South Dakota Game, Fish and Parks (GFP)

Rapid City 3305 W. South St., Rapid City, SD 57702 605.394.2391

SD GFP Local Conservation Officers

CITY	COUNTIES	OFFICER(S)	PHONE
Belle Fourche	Butte	Bill Eastman	605.391.1575
Custer	Custer	Ron Tietsort	605.431.7048
Hill City	southern Lawrence, western Pennington, northern Custer	Jeff Edwards	605.381.9995
Hot Springs	Fall River	D.J. Schroeder	605.381.6438
Rapid City	Pennington	Chris Dekker Jacob Hasz Adam Geigle (District Supervisor)	605.390.0923 605.415.6462 605.390.1230
Spearfish	Lawrence	Josh Thompson Brian Meiers (District Supervisor) Mike Apland (District Supervisor)	605.381.4704 605.391.6023 605.391.1574
Sturgis	Southwestern Meade	Ryan Pearson	605.391.0836

For all Conservation Officers state-wide see: <https://gfp.sd.gov/contactus/>

Montana Fish, Wildlife and Parks

FWP Region 7 Headquarters, 352 I-94 Business Loop, Miles City, MT 59301, 406-234-0900,
E-mail: fwprg72@mt.gov.

Nebraska Game and Parks

Non-Game Bird Program Manager: Joel Jorgensen (402) 471-5419

Permitting Agent: Mike Fritz, Zoologist (402) 471-5419 (*permit required to move nests*)

Alliance District Office, 299 Husker Rd, P.O. Box 725, Alliance, NE 69301-0725, 308-763-2940

NEBRASKA PANHANDLE – Northwest District			
Officer	Location	Phone	Cell
Jim Zimmerman (District Supervisor)	Gering office	308-641-9590	308-641-6138
Scott Brandt	Gering	308-631-0663	
Bryce Streger	Ogallala	308-289-0427	
Frank Miller	Valentine	402-389-0444	
Dan Kling	Harrison	308-430-0572	

Raptor Rehabilitators

South Dakota

Maggie Engler, Avian Research & Consulting, LLC, 605-391-2511, Email: birdwoman@q.com

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NOTE: Maggie has contacts throughout the northern Midwest if an avian incident occurs outside of the Rapid City area. She can assist in finding resources where ever needed.

Montana

Diane Morse, Gillette, 307-682-2532

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APPENDIX D: PROTECTED SPECIES AND SPECIES OF CONCERN

SOUTH DAKOTA

SOUTH DAKOTA'S PRIORITY SPECIES, STATE STATUS, HABITAT ASSOCIATION, AND PRIORITY LEVEL.			
Species	⁴State Status	Habitat Association	⁵Priority Level
Horned Grebe	B	Wetland	I
Red-necked Grebe	B	Wetland	III
Eared Grebe	B	Wetland	II
Western Grebe	B	Wetland	III
American White Pelican	B	Wetland	II
American Bittern	B	Wetland	I
Least Bittern	B	Wetland	III
Great Blue Heron	B	Wetland	II
Black-crowned Night Heron	B	Wetland	I
Northern Pintail	B	Wetland	II
Canvasback	B	Wetland	II
Redhead	B	Wetland	II
Bald Eagle	B	Riparian	II
Northern Harrier	B	Grassland	I
Northern Goshawk	Y	Black Hills	III
Swainson's Hawk	B	Woodland/Grassland	I
Ferruginous Hawk	B	Grassland	
Golden Eagle	B	Grassland	
Gyr Falcon	W	Grassland	
Ring-necked Pheasant	Y	Grassland	III
Sharp-tailed Grouse	Y	Grassland	I
Greater Sage-Grouse	Y	Grassland	I
Greater Prairie Chicken	Y	Grassland	I
Ruffed Grouse	Y	Sagebrush	III
Virginia Rail	B	Grassland	I
Whooping Crane	M	Black Hills	III
Piping Plover	B	Wetland	II
American Avocet	B	Wetland	II
Willet	B	Riverine	I
Upland Sandpiper	B	Grassland	I

⁴ B=breeding, W=wintering, M=migratory, Y=year round, BH=Black Hills

⁵ Level I: Species with the highest conservation priority due to high maximum abundance of the species within its range or South Dakota constitutes the core of the species breeding range and the species is showing population declines in South Dakota or across its range.

Level II: Species with a moderate conservation priority due to medium abundance scores or management plans are already in place (e.g., Federally listed, game species).

Level III: Species with a moderate conservation priority but have low abundance scores in South Dakota or South Dakota is on the periphery of the species' range, species unique to some habitats (Black Hills) in South Dakota which may not be declining nationally but are considered important to the biodiversity in the state, and wintering species.

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SOUTH DAKOTA'S PRIORITY SPECIES, STATE STATUS, HABITAT ASSOCIATION, AND PRIORITY LEVEL.			
Species	⁴State Status	Habitat Association	⁵Priority Level
Long-billed Curlew	B	Grassland	I
Marbled Godwit	B	Wetland/Grassland	I
Wilson's Phalarope	B	Wetland/Grassland	I
Franklin's Gull	B	Wetland	I
Common Tern	B	Wetland	III
Least Tern	B	Riverine	II
Black Tern	B	Wetland	I
Mourning Dove	B	Grassland/woodland	III
Black-billed Cuckoo	B	Woodland	I
Burrowing Owl	B	Grassland	I
Short-eared Owl	Y	Grassland	I
Whip-poor-will	B	Woodland	III
White-throated Swift	B	Open areas near rocky cliffs	II
Ruby-throated Hummingbird	B,M	Woodland residential	III
Lewis's Woodpecker	B	Black Hills	III
Red-headed Woodpecker	B	Woodland	II
Yellow-bellied Sapsucker	B	Woodland	III
Red-naped Sapsucker	B	Black Hills	III
American Three-toed Woodpecker	Y	Black Hills	III
Black-backed Woodpecker	Y	Black Hills	III
Eastern Wood-Pewee	B	Woodland	III
Willow Flycatcher	B	Woodland	II
Bell's Vireo	B	Woodland	III
Yellow-throated Vireo ¹	B	Woodland	III
Pinyon Jay	Y	Black Hills	III
Clark's Nutcracker	Y	Black Hills	III
Red-breasted Nuthatch	Y	Woodland	III
Pygmy Nuthatch	Y	Black Hills	III
Blue-gray Gnatcatcher	B	Woodland	III
American Dipper	Y	Black Hills	III
Townsend's Solitaire	Y	Black Hills	III
Veery	B	Black Hills, Woodland	III
Wood Thrush	B,M	Woodland	III
Sage Thrasher	B	Sagebrush	III
Sprague's Pipit	B	Grassland	III
Virginia's Warbler	B	Black Hills	III
Black-and-White Warbler	B	Black Hills	III
Scarlet Tanager	B	Woodland	III
Western Tanager	B	Woodland	III
Eastern Towhee	B	Woodland	III
American Tree Sparrow	W	Grassland	III
Brewer's Sparrow	B	Sagebrush	II
Lark Bunting	B	Grassland	I
Savannah Sparrow	B	Grassland	I
Grasshopper Sparrow	B	Grassland	I

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SOUTH DAKOTA WOODLAND SPECIES OF CONCERN			
Species	PIF Continental Population Objective	Habitat	Occurrence in South Dakota
Bald Eagle	*	Riparian woodlands	All
Swainson's Hawk	Maintain/increase	Woodlands and prairie	All
Black-billed Cuckoo	*	Woodlands	All
Red-headed Woodpecker	Increase by 100%	Woodlands and open areas with dead trees	All
Willow Flycatcher	Increase by 50%	Shrubs and small trees	All
Warbling Vireo	*	Woodlands, riparian	All
Veery	*	Woodlands, riparian thickets	Black Hills, extreme northeastern
Black-and-white Warbler	*	Deciduous woodlands, groves	Southwestern
Western Tanager	*	Pine forests	Black Hills, Western
Rose-breasted Grosbeak	*	Woodlands	All
Orchard Oriole	*	Woodland edge	All

*Not on PIF species of continental importance for the U.S. and Canada list (Rich et al. 2004)

SOUTH DAKOTA GRASSLAND SPECIES OF CONCERN.			
Species	PIF Continental Population Objective	Habitat	Occurrence in SD
Northern Harrier	*	Grasslands, open fields	All
Ferruginous Hawk	*	Grasslands, prairie dog colonies	All but Southeast
Golden Eagle	*	Grasslands, open areas, prairie dog colonies	West
Sharp-tailed Grouse	Maintain	Grasslands	All but SE
Greater Prairie-Chicken	Increase by 100%	Grasslands	Central
Upland Sandpiper	Increase by 50%**	Grasslands	All
Long-billed Curlew	Increase by 50%**	Mixed grass prairie	Western
Burrowing Owl	*	Short prairie, prairie dog colonies	Western
Short-eared Owl	Increase by 100%	Open grasslands	All
Sprague's Pipit	Increase by 100%	Mixed grass prairie	Northwest
Lark Bunting	Maintain	Dry grasslands	All, esp. western
Savannah Sparrow	*	Grasslands	All
Grasshopper Sparrow	Maintain	Grasslands	All
Baird's Sparrow	Increase by 100%	Native grasslands	Northcentral and west
Chestnut-collared Longspur	Maintain	Native mixed grass	All, esp. western
McCown's Longspur	Maintain	Short prairie, prairie dog towns	Extreme Northwest
Dickcissel	Increase by 50%	Dense grasslands, weedy fields	All
Bobolink	*	Grasslands	All
Western Meadowlark	*	Grasslands	All

*Not on PIF species of continental importance for the U.S. and Canada list (Rich et al. 2004).

**Estimated from U.S. Shorebird Conservation Plan population targets (Brown et al. 2001).

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SOUTH DAKOTA WETLAND SPECIES OF CONCERN.			
Species	Population Objective	Habitat	South Dakota Distribution
Eared Grebe	*	C	All
Western Grebe	*	C	All
American Bittern	*	A	All
Great Blue Heron	*	D	All
Black-crowned Night-Heron	*	A	All but extreme west
Northern Pintail	Increase by 100% ^b	A	All
Canvasback	Maintain ^b	B	All
Redhead	Maintain ^b	B	All
Piping Plover	Increase by 100% ^c	E	Riverine
American Avocet	Maintain ^c	Alkaline lakes, shallow ponds	All
Willet	Maintain ^c	Mudflats, wet meadows	All but southeastern
Marbled Godwit	Maintain ^c	Wet fields, mud flats, grasslands	All but southeastern
Wilson's Phalarope	Increase by 100% ^c	Wet meadows, shallow ponds	All but southeastern
Franklin's Gull	*	B	Northern
Least Tern	*	E	Missouri River
Black Tern	*	B	All

^aWetland types based on amount of emergent vegetation, open water, and nesting habitat formulated by Beyersbergen et al. (2004). Wetlands with A=substantial emergent vegetation and variable open water, B=emergent vegetation and partial open water, C=emergent vegetation and extensive open water, D=emergent vegetation, open water, nesting trees, E=lake or river with open water, barren ground, islands.

^bEstimated from the North American Waterfowl Management Plan 1998 Update.

^cEstimated from U.S. Shorebird Conservation Plan population targets (Brown et al. 2001).

^dPIF population objective.

*Not on PIF species of continental importance for the U.S. and Canada list (Rich et al. 2004).

NOTE: SDGFP has contracted with the Rocky Mountain Bird Observatory to conduct a statewide colonial waterbird inventory of South Dakota. This effort will produce baseline data upon which a long-term monitoring program will be developed. The initial inventory project will be completed by December 31, 2007.

Species of Concern in Big Sagebrush Habitats in South Dakota			
Species	PIF Continental Population Objective	Habitat	South Dakota Distribution
Greater Sage-Grouse	Increase by 100%	Big Sagebrush	Extreme northwestern and southwestern
Sage Thrasher	Maintain	Big Sagebrush	Extreme northwestern and southwestern
Brewer's Sparrow	Increase 100%	Big Sagebrush	Extreme northwestern and southwestern

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SOUTH DAKOTA SPECIES OF CONCERN IN THE BLACK HILLS		
Species	PIF Continental Population Objective	Habitat
Ruffed Grouse	*	Aspen, open pine
Northern Goshawk	*	Conifer, mixed forests
Lewis's Woodpecker	Maintain/increase	Dead trees in burned forest, stream bottoms
Red-naped Sapsucker	Maintain	Aspen groves, mixed pine/aspen
American Three-toed Woodpecker	*	Spruce forests
Black-backed Woodpecker	Maintain	Recent burns, conifer forests
Cordilleran Flycatcher	*	Mature woodland, foothill riparian areas
Veery		Riparian, aspen
Pinyon Jay	Increase 100%	Open pine forests
Clark's Nutcracker	Maintain	Conifer forests
Pygmy Nuthatch	*	Pine forests
American Dipper	*	Mountain streams
Virginia's Warbler	Maintain/increase	Pine-juniper-shrub
Black-and-white Warbler	*	Oak woodlands
Western Tanager	*	Ponderosa pine forests
Dark-eyed Junco	*	Coniferous and mixed forest
Cassin's Finch	Maintain	Woodlands, residential
Lesser Goldfinch	*	Woodlands, weedy fields
Pine Siskin	*	Woodlands

*Not on PIF species of continental importance for the U.S. and Canada list (Rich et al. 2004)

SOUTH DAKOTA WINTERING SPECIES OF CONCERN			
Species	PIF Population Objective	Habitat	Distribution
Gyr Falcon	Maintain	Grassland	All
American Tree Sparrow	Maintain	Shrub/successional	All except Black Hills
Harris's Sparrow	Increase 100%	Shrub/successional	All except Black Hills
Lapland Longspur	Maintain	Grassland	All except Black Hills

NEBRASKA

NEBRASKA ENDANGERED AND THREATENED SPECIES - 5 Species			
Common Name	Scientific Name	State Status	Federal Status
Eskimo Curlew*	Numenius borealis	Endangered	Endangered
Whooping Crane	Grus Americana	Endangered	Endangered
Interior Least Tern	Sterna antillarum athalassos	Endangered	Endangered
Piping Plover	Charadrius melodus	Threatened	Threatened
Mountain Plover	Charadrius montanus	Threatened	

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MONTANA SPECIES OF CONCERN

Common Name (Scientific Name)	Family	CFWCS Tier ID ⁶	Habitat	% MT that is Breeding Range	Verified in These Counties
American Bittern, <i>Botaurus lentiginosus</i>	Bitterns / Egrets / Herons / Night-Herons	2	Wetlands	100%	Carter
Great Blue Heron, <i>Ardea herodias</i>	Bitterns / Egrets / Herons / Night-Herons	3	Riparian forest	100%	Carter, Powder River
Bobolink, <i>Dolichonyx oryzivorus</i>	Blackbirds	3	Moist grasslands	100%	Carter
Brown Creeper, <i>Certhia americana</i>	Creepers	2	Moist conifer forests	53%	Carter, Powder River
Yellow-billed Cuckoo, <i>Coccyzus americanus</i>	Cuckoos	2	Prairie riparian forest	50%	Carter
Cassin's Finch, <i>Carpodacus cassinii</i>	Finches	3	Drier conifer forest	62%	Powder River
Ferruginous Hawk, <i>Buteo regalis</i>	Hawks / Kites / Eagles	2	Sagebrush grassland	95%	Carter, Powder River
Golden Eagle, <i>Aquila chrysaetos</i>	Hawks / Kites / Eagles	2	Grasslands	100%	Carter, Powder River
Northern Goshawk, <i>Accipiter gentilis</i>	Hawks / Kites / Eagles	2	Mixed conifer forests	68%	Carter, Powder River
Clark's Nutcracker, <i>Nucifraga columbiana</i>	Hawks / Kites / Eagles	3	Conifer forest	84%	Carter, Powder River
Pinyon Jay, <i>Gymnorhinus cyanocephalus</i>	Jays / Crows / Magpies	2	Open conifer forest	55%	Carter, Powder River
Chestnut-collared Longspur, <i>Calcarius ornatus</i>	Jays / Crows / Magpies	3		67%	Carter, Powder River
Burrowing Owl, <i>Athene cunicularia</i>	Longspurs and Snow Buntings	1		82%	Carter, Powder River
Sprague's Pipit, <i>Anthus spragueii</i>	Pipits	2	Grasslands	67%	Carter

⁶ **Tier I** Greatest conservation need. Montana Fish, Wildlife & Parks has a clear obligation to use its resources to implement conservation actions that provide direct benefit to these species, communities, and focus areas.

Tier II Moderate conservation need. Montana Fish, Wildlife & Parks could use its resources to implement conservation actions that provide direct benefit to these species, communities, and focus areas.

Tier III Lower conservation need. Although important to Montana's wildlife diversity, these species, communities, and focus areas are either abundant and widespread or are believed to have adequate conservation already in place.

Tier IV Species that are non-native, incidental, or on the periphery of their range and are either expanding or very common in adjacent states.

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Common Name (Scientific Name)	Family	CFWCS Tier ID⁶	Habitat	% MT that is Breeding Range	Verified in These Counties
Mountain Plover, <i>Charadrius montanus</i>	Plovers	1	Grasslands	73%	Powder River
Long-billed Curlew, <i>Numenius americanus</i>	Sandpipers	1	Grasslands	100%	Carter, Powder River
Loggerhead Shrike, <i>Lanius ludovicianus</i>	Shrikes	2	Shrubland	100%	Carter, Powder River
Baird's Sparrow, <i>Ammodramus bairdii</i>	Sparrows	2	Grasslands	67%	Carter, Powder River
Brewer's Sparrow, <i>Spizella breweri</i>	Sparrows	2	Sagebrush	100%	Carter, Powder River
Grasshopper Sparrow, <i>Ammodramus savannarum</i>	Sparrows	2	Grasslands	100%	Carter, Powder River
Sage Thrasher, <i>Oreoscoptes montanus</i>	Thrashers / Mockingbirds / Catbirds	3	Sagebrush	84%	Carter, Powder River
Veery, <i>Catharus fuscescens</i>	Thrushes	2	Riparian forest	100%	Powder River
Greater Sage-Grouse, <i>Centrocercus urophasianus</i>	Upland Game Birds	1	Sagebrush	75%	Carter, Powder River
Black-backed Woodpecker, <i>Picoides arcticus</i>	Woodpeckers	1	Conifer forest burns	49%	Powder River
Lewis's Woodpecker, <i>Melanerpes lewis</i>	Woodpeckers	2	Riparian forest	78%	Carter, Powder River
Red-headed Woodpecker, <i>Melanerpes erythrocephalus</i>	Woodpeckers	2	Riparian forest	60%	Carter

Procedure Name:	Appendix D	POLICY NO.
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MONTANA POTENTIAL SPECIES OF CONCERN

Common Name (Scientific Name)	Family	CFWC S Tier ID	Habitat	% MT that is Breeding Range	Verified in These Counties
Swainson's Hawk, <i>Buteo swainsoni</i>	Hawks / Kites / Eagles	2	Sagebrush grassland	87%	Carter
Common Poorwill, <i>Phalaenoptilus</i>	Nighthawks	3	Shrub grassland	100%	Carter, Powder River
Eastern Screech-Owl, <i>Megascops asio</i>	Owls	3	Riparian forest	74%	Carter, Powder River
Short-eared Owl, <i>Asio flammeus</i>	Owls	3	Grasslands	100%	Carter, Powder River
Hooded Merganser, <i>Lophodytes cucullatus</i>	Swans / Geese / Ducks	2	Rivers / Riparian Wetland	100%	Carter, Powder River
Dickcissel, <i>Spiza americana</i>	Tanagers / Cardinals / Buntings	2	Grasslands	45%	Carter, Powder River
Eastern Bluebird, <i>Sialia sialis</i>	Thrushes	2	Prairie woodlands	35%	Carter, Powder River
Plumbeous Vireo, <i>Vireo plumbeus</i>	Vireos	3	Conifer forest	31%	Carter, Powder River

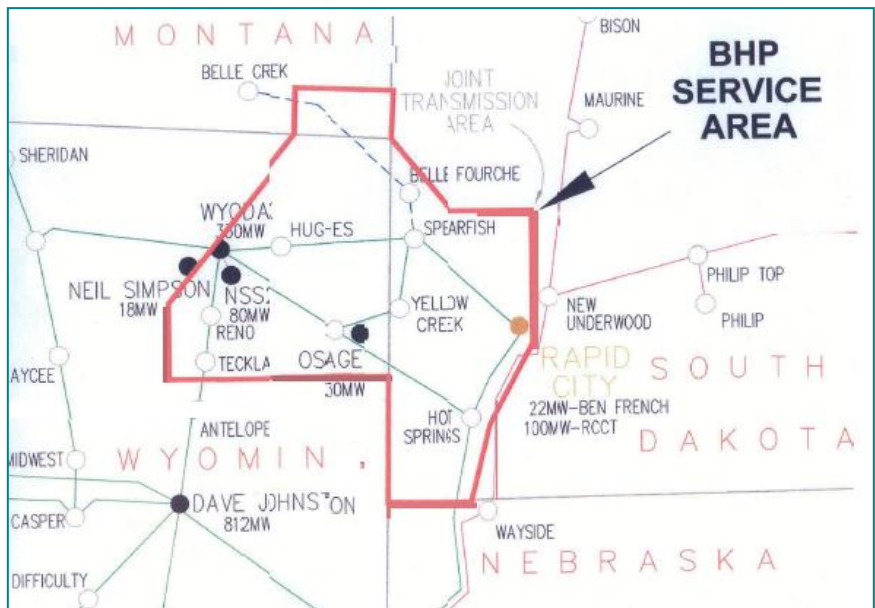
Procedure Name:	Appendix D	POLICY NO.
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Common Name (Scientific Name)	Family	CFWC S Tier ID	Habitat	% MT that is Breedi ng Range	Verifie d in These Counti es
Ovenbird, Seiurus aurocapilla	Warblers	3	Deciduous forest	75%	Carter, Powde r River

Procedure Name:	Appendix E	POLICY NO.
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APPENDIX E: SERVICE TERRITORY MAPS

BLACK HILLS ENERGY SOUTH DAKOTA, MONTANA, NEBRASKA SERVICE TERRITORY⁷

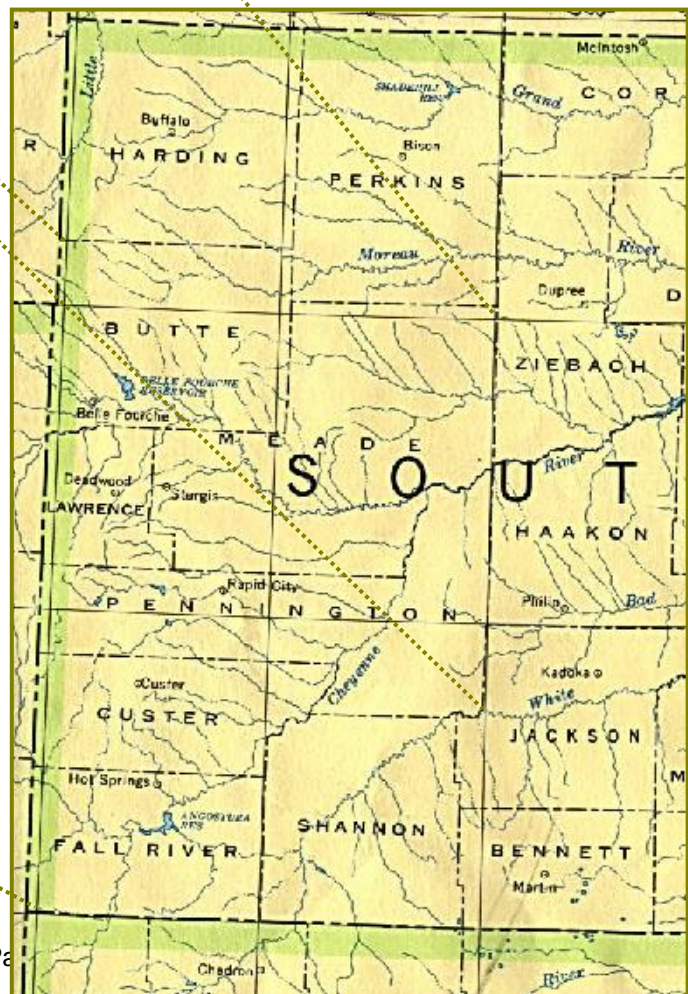
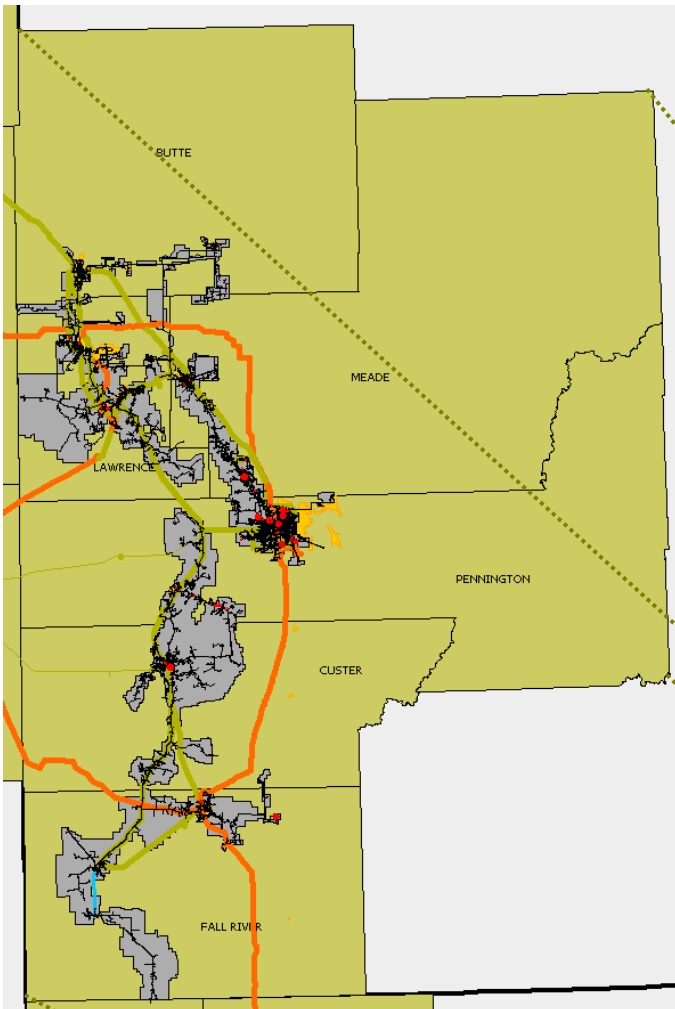


⁷ BHE Wyoming Operations are covered under a separate Wyoming-specific Plan.

Procedure Name:	Appendix E	POLICY NO.
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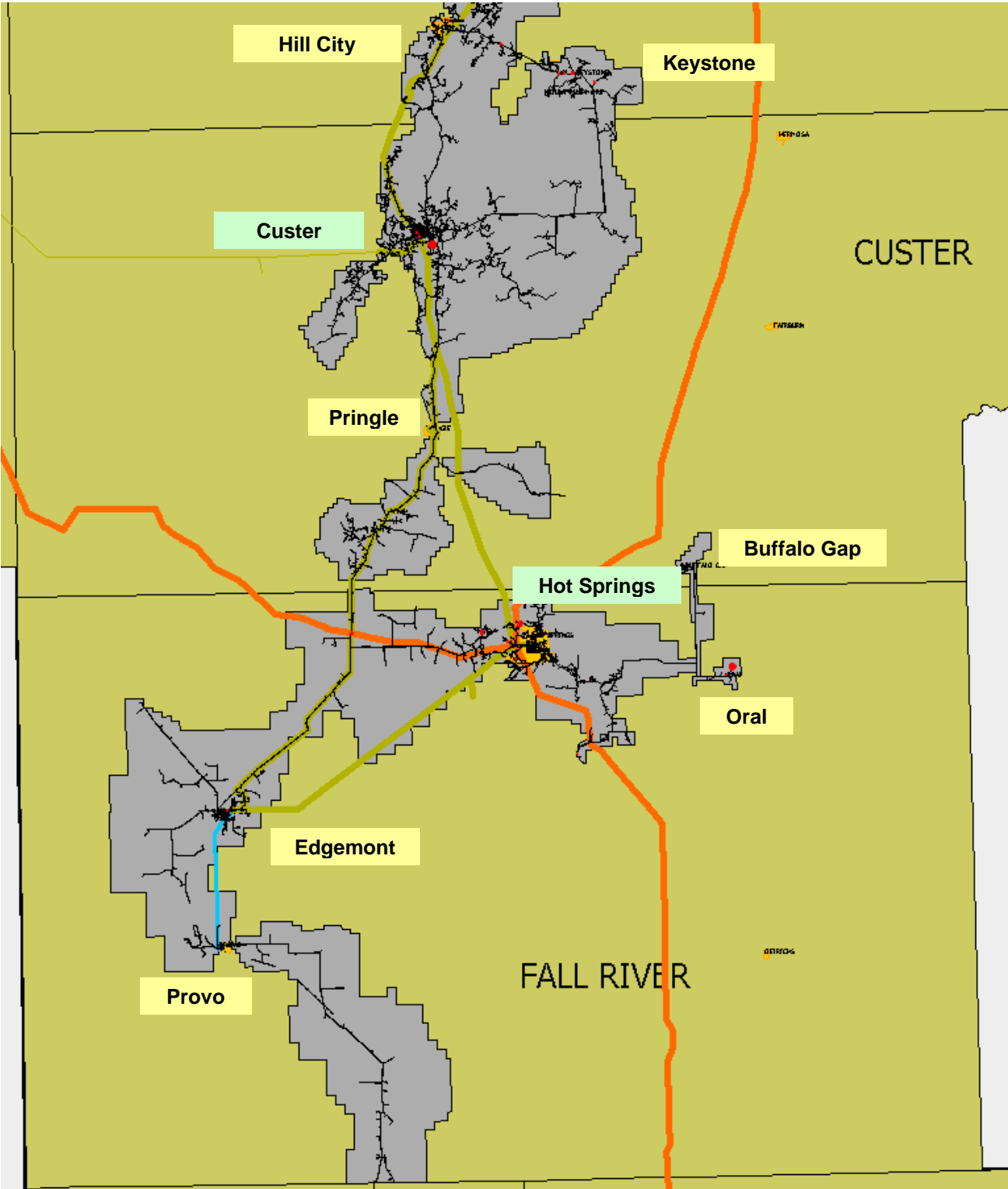
BLACK HILLS ENERGY, SOUTH DAKOTA

Butte, Meade, Lawrence, Pennington, Custer and Fall River Counties, SD, Distribution and Transmission Systems






Procedure Name:	Appendix E	POLICY NO.
Avian Protection – Black Hills Energy: South Dakota, Montana, and Nebraska Operations	Page 4	E-01-01-02

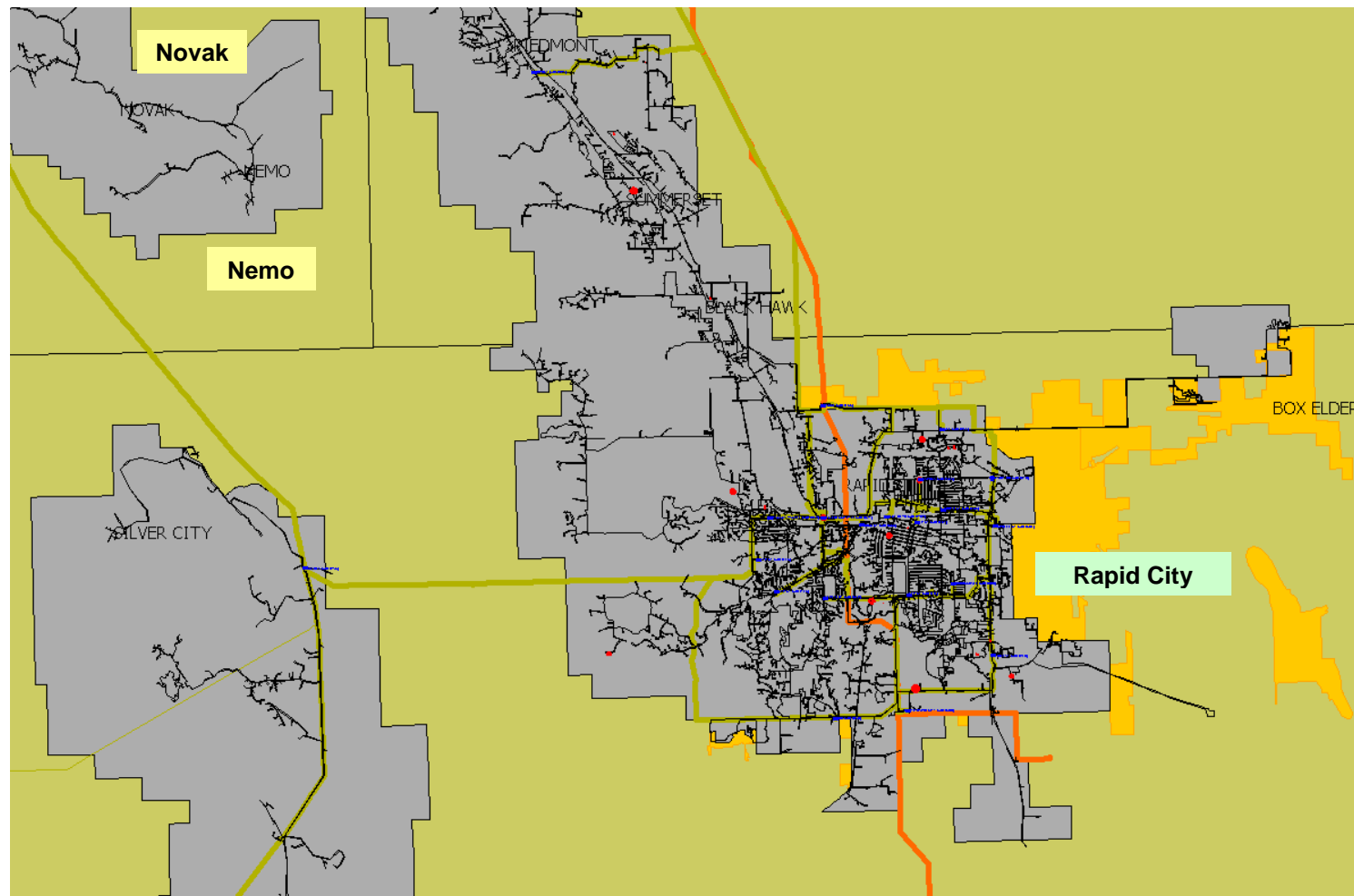
Black Hills Energy Southern Hills Area



Procedure Name: Avian Protection – Black Hills Energy: South Dakota, Montana, and Nebraska Operations	Appendix E Page 5	POLICY NO. E-01-01-02
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Black Hills Energy Rapid City Area

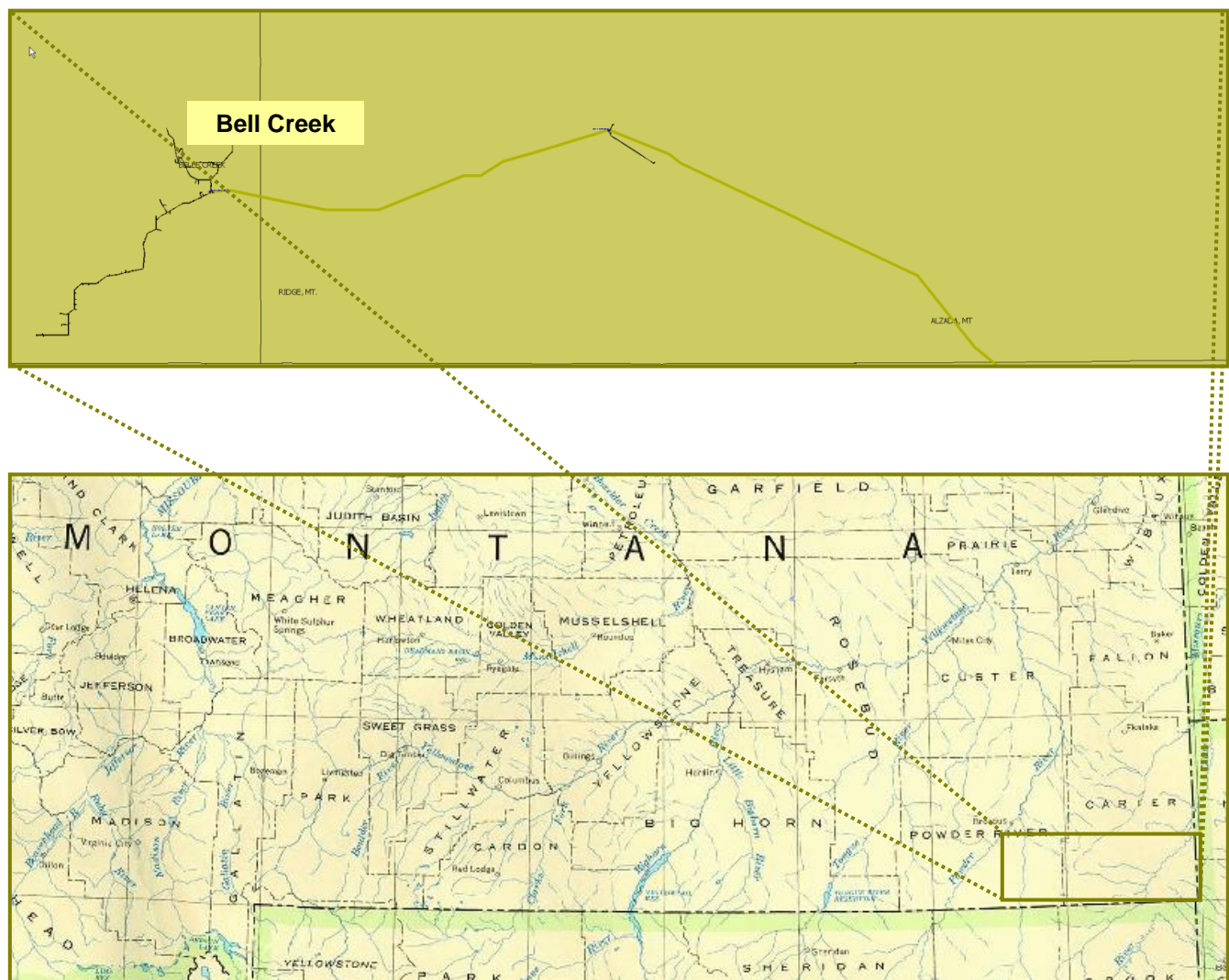
230 kV Transmission 
 69 kV Transmission 
 Substations 



Procedure Name: Avian Protection – Black Hills Energy: South Dakota, Montana, and Nebraska Operations	Appendix E Page 6	POLICY NO. E-01-01-02
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BLACK HILLS ENERGY, MONTANA **Bell Creek, Powder River County and Carter County, MT,** **Distribution and Transmission Systems**

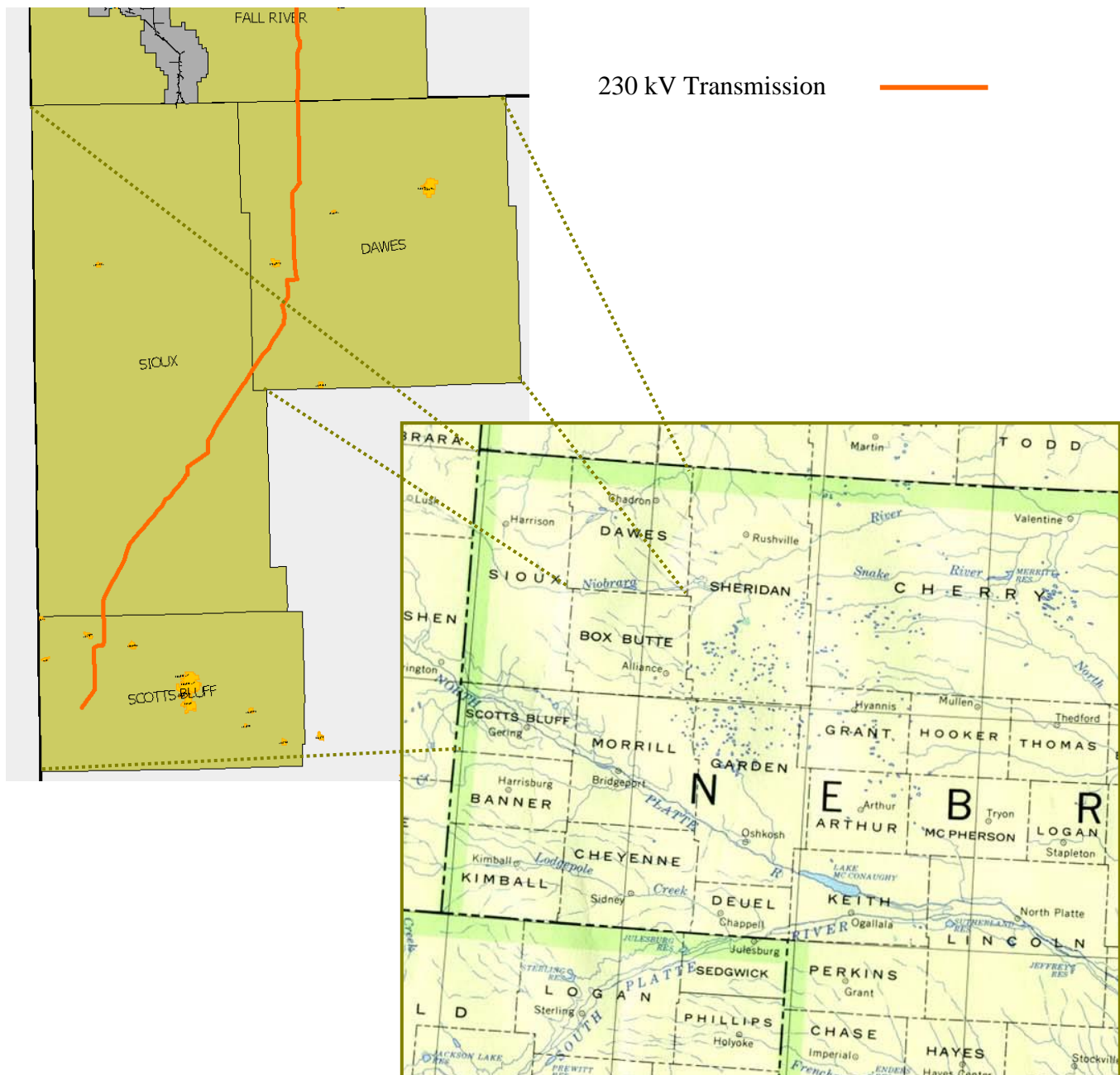
69 kV Transmission —————



Procedure Name:	Appendix E	POLICY NO.
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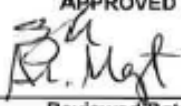
BLACK HILLS ENERGY, NEBRASKA

Sioux, Dawes and Scottsbluff Counties, NE, Transmission Systems



APPENDIX F – AVIAN PROTECTION POLICY

BLACK HILLS CORPORATION COMPANY POLICY

Policy Name: AVIAN PROTECTION POLICY	DATE ISSUED	POLICY NO. E-01-01-02
	DATE EFFECTIVE	PAGE NO. Page 1 of 2
(PAGE NO.) (POLICY NO.) DATED	Department Environmental Services	APPROVED 
SUPERSEDES	Reviewed by	Reviewed Date 9.30.11

1. PURPOSE

The purpose of this Policy is to set forth Black Hills Corporation's policy on managing bird interactions with power lines and commitment to reducing detrimental effects of these interactions.

2. SCOPE

This Policy applies to Black Hills Corporation, its subsidiaries and affiliates that own or operate above ground power lines and appurtenances.

3. DEFINITIONS

3.1 Company: Black Hills Corporation, its subsidiaries and affiliates

3.2 Avian Protection Plan (APP or the Plan): The programs in effect for each subsidiary of the Company to reduce the operational and avian risks that result from avian interactions with electric utility facilities.

4. POLICY

Bird interactions with power lines may cause bird injuries and mortalities, which, in turn, may result in violations of bird protection laws, outages, grass and forest fires, or raise concerns by employees, resource agencies and the public.

This Policy is intended to ensure compliance with legal requirements while improving distribution system reliability.

To fulfill this commitment, the Company will:

- Implement and comply with each comprehensive Avian Protection Plan.

APPENDIX F – AVIAN PROTECTION POLICY

Policy Name:	PAGE	POLICY NO.
Avian Protection Policy	Page 2 of 2	E-01-01-02

- Ensure its actions comply with applicable laws, regulations, permits, and APP procedures.
- Document bird mortalities, problem poles and lines, and problem nests.
- Provide information, resources, and training to improve its employees' knowledge and awareness of the APP.
- Construct all new facilities to avian-safe standards.
- Retrofit or modify power poles where a protected bird has died or been injured. Modifications will be in accordance with APP procedures.
- Participate with public and private organizations in programs and research to reduce detrimental effects of bird interactions with power lines.

5. RESPONSIBILITIES

Company management and employees are responsible for managing bird interactions with power lines and are committed to reducing the detrimental effects of these interactions. Specific responsibilities include:

Avian Protection Program Coordinator: The Avian Protection Program Coordinator (AFPC) or designee is responsible for developing and documenting Program Procedures and Practices, developing and implementing the Avian Protection Plan, communicating with regulatory agencies, and monitoring the implementation of the Plan.

Environmental Services: Environmental Services (ES) personnel assist operations to implement the Plan including monitoring, incident investigation, reporting, and mitigation design and operational changes needed to appropriately reduce the risk of negative interactions with protected avian species.

Electrical Transmission/Distribution: Transmission/Distribution will delegate personnel who are responsible managing all aspects of the Plan including monitoring, incident investigation, reporting, and mitigation design and operational changes needed to appropriately reduce the risk of negative interactions with protected avian species.

Power Generation, Mining, Exploration and Production (E&P)/Midstream: Environmental support personnel are responsible for managing aspects of the Plan including monitoring, incident investigation, reporting, and mitigation design and operational changes needed to appropriately reduce the risk of negative interactions with protected avian species.

Electric Construction Standards Committees: The Company's electrical design standards committees (transmission, distribution) are responsible for the approval of electrical structure and electrical design modifications needed to meet Plan requirements.