

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Division of Ecological Services

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Houston, Texas 77058-3051

281/286-8282 FAX 281/488-5882



November 13, 2009

Colonel David C. Weston
Galveston District, Corps of Engineers
Attn: Regulatory Branch, Kristy Farmer
P.O. Box 1229
Galveston, Texas 77553-1229

Dear Colonel Weston:

Reference is made to the Public Notice for Department of the Army Permit SWG-2009-00945, dated October 13, 2009. The applicant, White Stallion Energy Center, LLC, proposes to construct a 1320 megawatt, base-load, solid fueled, and circulating fluidized bed steam electric power generating station fueled by petroleum coke, a byproduct of oil refining produced in the region, in a blend with high quality bituminous coal imported into Texas. These fuels can be delivered by rail, barge, or truck. Accordingly, the applicant proposes to discharge approximately 19,000 cubic yards of clean upland fill material excavated from the site into a total of 8.133 acres of jurisdictional waters of the United States for the construction of 2 outfall structure aprons, 2 barge facility supports with sheet piling and concrete and base material and concrete for a new low-emission solid fuel power plant. The proposed project is located adjacent to the Colorado River (mile marker 14) off County Road 2668, near Bay City, in Matagorda County, Texas.

The revised Department of the Interior Manual Instructions (503 DM 1), dated August 3, 1973, assign responsibility for Department of the Interior coordination and review of Department of the Army permit applications to the U.S. Fish and Wildlife Service (Service). Our comments are provided in accordance with these instructions and with the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661, et seq.), with the provisions of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 703 et seq.) and the Migratory Bird Treaty Act (40 Stat. 755, as amended; 16 U.S.C. 703 et seq.).

Bald eagles are known to nest within five miles of the proposed power station. Bald eagles were removed from the list of threatened and endangered species on August 8, 2007 (72 FR 37346), but are still protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Therefore, the Service recommends carefully evaluating the project for potential effects to bald eagles. The National Bald Eagle Management Guidelines, available online at <http://www.fws.gov/pacific/eagle/NationalBaldEagleManagementGuidelines.pdf>, may assist you in this evaluation.

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Colonel David C. Weston
Galveston District, Corps of Engineers
Attn: Regulatory Branch, Steven Walls
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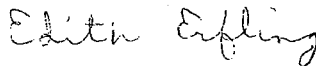
The Service requests that the applicant provide additional, detailed information on the proposed transmission lines that will be constructed for the proposed power station. The Service is concerned about the impacts of these transmission lines on migratory birds. Native migratory birds (e.g., waterfowl, shorebirds, passerines, hawks, owls, vultures, falcons) are afforded protection under the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712). Transmission lines often pose a hazard to migratory birds in flight and can pose a threat to nesting birds attracted to the site. For guidance on reducing transmission line impacts, see the following publications: 1) *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.* and 2) *Suggested Practices for Raptor Protection on Power Lines. Edison Electric Institute/Raptor Research Foundation, Washington, D.C.* In addition, development of a voluntary Avian Protection Plan may be useful in ensuring that migratory bird resources are protected while enhancing reliability and reducing maintenance. The referenced publications and Avian Protection Plan Guidelines are available through the Edison Electric Institute's Avian Power Line Interaction Committee (APLIC) website at <http://www.aplic.org>.

In addition, the Service requests information on all habitat impacts of the entire proposed project. The public notice listed wetland and stream impacts associated with the project, but did not detail the amount of upland acres the project would temporarily or permanently impact. On October 26, 2009, a Service biologist observed raptors and grassland birds (osprey, northern harrier, white-tailed kite, red-tailed hawk, American kestrel, eastern meadowlark) using the wetland and upland habitats of the project area.

The Service also requests detailed information on the amount and type of mitigation proposed for project impacts. The Service recommends the applicant compensate for all impacts to upland and wetland habitat in the project area. Although the public notice states that the applicant intends to mitigate by purchasing mitigation credits through an agreement with the National Fish and Wildlife Foundation, the Service is not aware of a final agreement to do so.

Please contact staff biologist Catherine Yeargan at 281/286-8282 if you have any questions or if we can be of further assistance.

Sincerely,



for Stephen D. Parris
Field Supervisor, Clear Lake ES Field Office