



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Kentucky Ecological Services Field Office  
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Frankfort, Kentucky 40601  
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April 27, 2022

Blake Edge  
Green River Area Development District  
300 GRADD Way  
Owensboro, KY 42301

Subject: Programmatic ESA Compliance Approach for the Kentucky Infrastructure Authority's  
Cleaner Water Program, Kentucky

Dear Blake Edge:

The U.S. Fish and Wildlife Service (Service) is the lead Federal agency charged with the protection and conservation of Federal Trust Resources, including threatened and endangered species and migratory birds, in accordance with section 7 of the Endangered Species Act of 1973, as amended (ESA) (87 Stat. 884; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act, (16 U.S.C. 668-668d) (Eagle Act), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 701 et seq.).

The Cleaner Water Program (CWP) is a grant program administered by the Kentucky Infrastructure Authority (KIA) to improve drinking water and wastewater infrastructure and is part of the \$1.3 billion Building a Better Kentucky Plan. The American Rescue Plan Act funds the CWP, and \$250 million has been appropriated for clean drinking water and wastewater grants to fund projects across Kentucky. The availability of this federal funding has resulted in an increased demand to initiate projects through federally-supported grants, and use of federal funding also requires KIA to comply with Section 7 of the ESA for these projects. As a result, there has been an increase in the number of requests for the Service to review these grant projects.

To address this increased workload, the Service has worked with the KIA to develop a programmatic project review process for CLA projects. This process will help KIA obtain clearance for low- or no-effect projects in an expedited manner. This process will also fulfill the ESA's statutory obligations in a timely and consistent manner and assist KIA and project consultants in addressing Section 7 and National Environmental Policy Act (NEPA) environmental impact review requirements. Project types that are eligible for inclusion in the process include, but are not limited to:

1. Maintenance Projects: water meter replacement, in-house/facility work, and/or water line replacements
2. Construction Projects: water line size increase, new sewer line installation, lagoon/pump station rehabilitation, water line extension, and/or water main relocation

Please use the recommendations and processes in the sections below to evaluate proposed CWP projects. If proposed CWP projects do not meet the criteria discussed below, additional coordination with the Service is likely required.

### **Species Lists:**

All projects should acquire a species list for the area where the project is proposed. Please access the Information for Planning and Conservation (IPaC) website (<https://ecos.fws.gov/ipac/>) to obtain a species list for each project. The “Review Species and Resources” report contains a list of federally listed threatened and endangered species, critical habitats, migratory birds, wildlife refuges, fish hatcheries, and/or wetlands located in the project footprint, and can help identify trust resources in the general area of the subject property or project.

### **Description of Projects Covered:**

Any CWP grant request that is for work that will occur on existing structures (e.g. pump stations) or on various utilities projects (including, but not limited to, demolition, rehabilitation, renovations, and/or rebuilding of water and wastewater treatment facilities, water lines, sewer lines) are covered projects, provided all of the following criteria are met:

1. The proposed project does not require any clearing of undeveloped areas that contain natural habitat or forests and the proposed project area does not include any caves or cave-like habitats;
2. The proposed project will not include any open-trench stream crossings for projects where the IPaC generated species list includes any federally-listed crustaceans, fishes or clams (i.e., freshwater mussels);
3. The project is not within designated critical habitat for any federally listed species (by rule, designated critical habitat does not include already developed parcels). The IPaC generated official species list will state if any designated critical habitat occurs within the project area; and
4. The IPaC generated species list does not include: Short’s goldenrod (*Solidago shortii*), Price’s potato-bean (*Apios priceana*), or Kentucky glade cress (*Leavenworthia exigua* var. *laciniata*).

### **Clearance to Proceed:**

The Service believes CWP projects that meet the criteria described above will generally have no effect on species protected under the ESA. Therefore, for all projects that meet the criteria described above, no further coordination with the Service is necessary. Use this letter to document your consideration of endangered species and bald eagles for each covered project and

retain it in the project file associated with each project along with an explanation of how the project meets the criteria.

**Additional Considerations for Species Not Listed Under the ESA:**

Bald Eagles: If any of the above-referenced activities (rehabilitation, demolition, or rebuilding) are proposed to occur within 660 feet of an active or alternate bald eagle (*Haliaeetus leucocephalus*) nest during the nesting season (October 1 through May 15), we recommend the applicant or their designated agent coordinate with Kentucky Department for Fish and Wildlife Resources (KDFWR) on known bald eagle nest locations and, if an eagle nest is in close proximity to the project site, determine if a disturbance permit is necessary. For additional information on disturbance permit requirements, please visit the Service's web page: <https://www.fws.gov/service/3-200-71-eagle-take-associated-not-purpose-activity-incident-take>.

Migratory Birds: If any native birds are using the structures for nesting, actions should be taken to avoid disturbing adults, nests, eggs, or chicks as this could lead to a potential violation of the Migratory Bird Treaty Act. If nests are present or any birds are using the structures regularly for roosting purposes, we recommend the applicant or their designated agent coordinate with this office and visit the Service's Migratory Bird Program website at <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds> for recommendations on how impacts can be avoided and minimized.

For projects that do not meet the criteria specified above, please see the enclosure for instructions on how to submit a project to our office for review.

Reinitiation of consultation may be necessary if: (1) the project is modified in a manner not considered by this assessment; (2) a new species is listed or critical habitat is determined that may be affected by the project; or (3) new information indicates that the project may affect listed species or critical habitat in a manner not previously considered.

We appreciate the opportunity to work with you on this streamlining effort. If you have any questions, please contact Jennifer Garland of my staff at [jennifer\\_garland@fws.gov](mailto:jennifer_garland@fws.gov).

Sincerely,

Virgil Lee Andrews, Jr.  
Field Supervisor