Via Electronic and Certified Mail

February 28, 2022

The Honorable Deb Haaland
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RE: Sixty-day Notice of Intent to Sue for Violations of the Endangered Species Act Relating to Unlawful Biological Opinion, Concurrence, and NWP 12 Verification for Bullitt County Methane Gas Pipeline

Dear Secretary Haaland; Principal Deputy Director Williams; and Chief Ricketts,

In accordance with Section 11(g) of the Endangered Species Act ("ESA"), 16 U.S.C. § 1540(g), and to the extent such notice is deemed necessary, the Center for Biological Diversity ("Center") and Kentucky Resources Council provide this 60-day notice of its intent to sue the U.S. Fish and Wildlife Service ("Service") and the U.S. Army Corps of Engineers ("Corps") for violations of section 7 of the ESA[1] in connection with the Service's Biological Opinion ("BiOp")[2], incidental take statement ("ITS"), and concurrence, as well as the Corps' Nationwide Permit 12 ("NWP 12") verification for the Bullitt County Transmission Pipeline. ("Bullitt County Pipeline").[3]

I. Requirements of the Endangered Species Act

The ESA is "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation."[4] Its fundamental purposes are "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved

[1] 16 U.S.C. §§ 1531, *et seq*.; 50 C.F.R. § 402, *et seq*.
[2] FWS 2019-B-0038.
[3] LRL-2017-1046-jwr.
[4] 16 U.S.C. §§ 1531-1544; *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180 (1978).

[and] to provide a program for the conservation of such endangered species and threatened species . . . ."[5]

To achieve these objectives, the ESA directs the Secretary of the Interior, through the Service, to determine whether imperiled species are "threatened" and "endangered" and place them on the list of protected species.[6] An "endangered" or "threatened" species is one "in danger of extinction throughout all or a significant portion of its range," or "likely to become endangered in the near future throughout all or a significant portion of its range," respectively.[7]

Once a species is listed, the ESA provides a variety of procedural and substantive protections to ensure not only the species' continued survival, but its ultimate recovery, including the designation of critical habitat, the preparation and implementation of recovery plans, the prohibition against the taking of listed species, and the requirement for interagency consultation.[8]

Section 7 of the ESA requires all federal agencies to ensure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species or (2) result in the destruction or adverse modification of the critical habitat of such species.[9] For each federal action, the action agency must request from the Service whether any listed or proposed species may be present in the area of the agency action.[10] If listed or proposed species may be present, the federal agency must prepare a "biological assessment" to determine whether the listed species may be affected by the proposed action.[11]

If the action agency determines that its proposed action may affect any listed species or critical habitat, the agency must engage in formal consultation with the Service.[12] To complete formal consultation the Service must provide a biological opinion explaining how the proposed action will affect the listed species and its habitat, including critical habitat.[13]

If the biological opinion concludes that the action is not likely to jeopardize the continued existence of a listed species, and will not result in the destruction or adverse modification of critical habitat, the Service must provide an incidental take statement, specifying the amount or extent of such incidental taking on the listed species, any "reasonable and prudent measures" necessary or appropriate to minimize such impact, the "terms and conditions" that must be complied with to implement those measures, reporting requirements, and, procedures to handle or dispose of any individuals of a species actually taken.[14]

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[5] 16 U.S.C. § 1531(b).
[6] *Id*. § 1533.
[7] *Id*. § 1532(6), (20).
[8] *Id*. §§ 1533(a)(3), 1533(f), 1536, 1538.
[9] *Id.* § 1536(a)(2).
[10] *Id.* § 1536(c)(1); 50 C.F.R. § 402.12.
[11] 16 U.S.C. § 1536(c)(1).
[12] 50 C.F.R. § 402.14.
[13] 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14.
[14] 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i)(1).

Section 9 of the ESA and its implementing regulations prohibit the unauthorized "take" of listed species.[15] "Take" is defined broadly to include harming, harassing, trapping, capturing, wounding or killing a protected species either directly or by degrading its habitat.[16] Taking that is in compliance with the terms and conditions specified in a biological opinion is not considered a prohibited taking under Section 9 of the ESA.[17] These protections are intended to ensure the conservation of listed species.

II. Project Background

Louisville Gas & Electric ("LG&E") proposes to construct a 12-mile methane gas transmission pipeline to service Jim Beam's facilities in eastern Bullitt County, Kentucky. The pipeline's proposed route includes 71 stream crossings and would also impact wetlands, thus requiring LG&E to obtain a dredge and fill permit from the Army Corps pursuant to section 404 of the Clean Water Act ("CWA"). The project's proposed route would also impact sinkholes, karst cave terrain, and nearly 40 acres of forested habitat.[18]

On December 29, 2020, the Corps wrote to the Service requesting initiation of formal consultation pursuant to section 7(a)(2) of the ESA, based on its determination that construction is likely to adversely affect the endangered Indiana bat (*Myotis sodalis*) and the threatened Kentucky glade cress (*Leavenworthia exigua* var. *laciniata*). The Corps also determined that the pipeline is not likely to adversely affect the endangered gray bat (*Myotis grisescens*) or adversely modify designated critical habitat for Kentucky glade cress.[19] Finally, the Corps concluded that the pipeline is likely to adversely affect the threatened northern long-eared bat (*Myotis septentrionalis*)[20], but that any effects were addressed by the Service's programmatic biological opinion for the species' January 5, 2016 final 4(d) rule.[21] The Corps' determinations were based on a Biological Assessment ("BA") dated November 13, 2020 and prepared on behalf of the Corps by a contractor of LG&E's named Cardno.[22]

On January 15, 2021, the Service provided its concurrence with these determinations and agreed to engage in formal consultation with the Corps regarding the pipeline's effects on Indiana bat and Kentucky glade cress.[23] The Service thus conducted no further analysis on impacts to the gray bat or northern long-eared bat.

The Service issued the BiOp for the pipeline on June 9, 2021, concluding that the project is not likely to jeopardize the Indiana bat or the Kentucky glade cress. The BiOp included an ITS

[15] 16 U.S.C. § 1538(a)(1); 16 U.S.C. § 1533(d); 50 C.F.R. § 17.31.
[16] *See* 16 U.S.C. § 1532(19).
[17] 16 U.S.C. § 1536(o)(2).
[18] Van Velzer, R. (2020, March 5) Timeline: Jim Beam Wanted More Natural Gas, But Didn't Want To Pay For Bullitt Co. Pipeline. WFPL. https://wfpl.org/timeline-jim-beam-wanted-more-natural-gas-but-did-not-want-to-pay-for-the-pipeline/ (last checked December 28, 2021).
[19] Exh. 1 at 2-3.
[20] Cardno. Biological Assessment for the Bullitt County Transmission Line (December 29, 2020), at 22.
[21] Exh. 1 at 2.
[22] BA.
[23] Exh. 2 at 2-3.

with take limits for the Indiana bat, as well as terms and conditions for compliance with those take limits.

On August 26, 2021, the Corps issued the NWP 12 verification to LG&E.[24] The verification incorporates by reference the conditions of the Service's ITS, conditioning the CWA section 404 coverage on compliance with the BiOp's ITS conditions.

III. The Three Listed Bat Species Are All Dependent on Cave Habitat, Much of Which Has Not Been Documented

The Indiana bat, northern long-eared bat ("NLEB"), and gray bat all rely upon caves, sinkholes, and other underground features for significant portions of their lifecycle.

The Indiana bat is a medium-sized, "temperate, insectivorous, migratory bat that hibernates colonially in caves and mines in the winter."[25] The species ranges throughout much of the U.S. Northeast, Midwest, and Southeast. Indiana bat winter habitat is located in close proximity to its spring and fall habitat. Prior to winter, Indiana bats utilize fall swarming habitat within 5 to 10 miles of winter hibernacula, as bats mate and forage to accumulate enough fat to survive hibernation.[26] After emerging from hibernation, Indiana bats use spring staging habitat within one-half mile to one mile of hibernacula, where pregnancy is initiated via delayed fertilization in breeding females.[27]

NLEBs are a medium-sized bat distinguished by their large ears. The species ranges across much of the eastern and north central United States, as well as all Canadian provinces. Similar to the Indiana bat, NLEBs are found in forested habitats during the summer and hibernate in caves with high humidity during the winter.[28] Males and non-reproductive females also use caves as roosting habitat during summer.[29]

The gray bat is "perhaps, the most restricted to cave habitats of any U.S. mammal."[30] It has a smaller range than the other two species and is found in a handful of states in the Midwest and Southeast. Gray bats are year-round cave obligates that roost in caves all year long.[31] During winter, gray bats hibernate in deep, vertical caves.[32]

Although significant advancements have been made regarding the distribution of these bats since their listing under the ESA, Kentucky is rich in cave and karst habitat that could be used by any of the three bat species, many of which have yet to be documented.

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[24] LRL-2017-1046-jwr.
[25] U.S. Fish and Wildlife Service. Indiana Bat Draft Revised Recovery Plan (April 2007), at p. 7; *see also*, BiOp at 26, 32.
[26] BiOp at 34.
[27] *Id.* at 33.
[28] https://www.fws.gov/Midwest/endangered/mammals/nleb/pdf/NLEBFactSheet01April2015.pdf (last checked December 10, 2021).
[29] *Id.*
[30] U.S. Fish and Wildlife Service. Gray Bat Recovery Plan (July 1, 1982), at 4.
[31] BA at 7.
[32] Exh. 3 at 3.

For example, the draft revised Indiana Bat Recovery Plan states that "[a]lthough locations of many (presumably the majority of) Indiana bat hibernacula are known, further surveys of caves and abandoned mines are warranted."[33] As the Service notes, "many Indiana bats may colonize new sites and recolonize formerly occupied sites within their range." Thus, "strategic searches for undocumented and historic hibernacula may be prudent."[34] The Plan specifically directs the Service to "search for new winter populations and historically important Indiana bat roost sites" as a necessary recovery action.[35]

Similarly, the Service's Kentucky Field Office has stated that "[i]t is likely that other, undocumented northern long-eared bat hibernacula exist in Kentucky, especially at caves and other cave-like structures that are not subject to routine monitoring for federally-listed bats." Accordingly, the Service "expect[s] the number of known hibernacula to increase as a result of increased monitoring and survey efforts for the northern long-eared bat that will occur now that the species is listed."[36]

IV. Violations of the Endangered Species Act

A. The Service's Conclusion that the Pipeline Route Does Not Contain Cave Habitat for the Three Bat Species Lacks a Rational Basis

The Service concluded that there is no suitable cave habitat for any of the three bat species along the proposed 12-mile pipeline route. This conclusion was arbitrary and lacked a rational basis because: (1) the Corps did not conduct any cave surveys and failed to apply specific survey protocols for the Indiana bat within Kentucky; (2) the Service ignored the best available biological information from a variety of sources regarding the presence of cave habitat.

1. The Corps Did Not Conduct Cave Surveys, and Failed to Apply Survey Protocols for the Indiana Bat within Kentucky

The Service's BiOp acknowledged that the pipeline is likely to adversely impact summer roosting habitat of the Indiana bat, based on "the presence of several known Indiana bat maternity colonies in close proximity" to the proposed route.[37] The BiOp, however, reached an arbitrary conclusion that Indiana bat winter hibernacula habitat, and associated spring staging and fall swarming habitat, are absent from the project area.[38]

The BiOp's conclusion is based on vague and contradictory information provided by the Corps in the BA and supporting documents. As noted in the BiOp, the Corps states in the BA

[33] Indiana Bat Recovery Plan, at p. 150.
[34] *Id.*
[35] *Id.*
[36] U.S. Fish and Wildlife Service, Kentucky Field Office. Revised Conservation Strategy for Forest-Dwelling Bats in the Commonwealth of Kentucky, v.2 (April 2015), at 6. https://www.fws.gov/frankfort/pdf/20160601%20Revised%20FDBatConservStrategy%20ac.pdf (last checked December 27, 2021).
[37] BiOp at 33.
[38] *Id.* at 33-34.

that "a field survey and review of available maps," was done in order to assess whether any caves or other underground features were present along the proposed route, but that "[n]one of these potential habitat features were found."[39]

The Corps' statement that field surveys for winter hibernacula were conducted is, however, directly contradicted by the Technical Assistance Request describing the threatened and endangered species review done by Cardno on behalf of LG&E. As clearly stated in that document, "a cave survey was not conducted."[40] Instead, the contractor refers to a "visual survey of potential habitat only," in which "[n]o caves were found."[41]

While the BA and BiOp infer that Cardno specifically surveyed for caves and winter hibernacula, the contractor's own technical document makes clear that no such survey was conducted. Instead, the potential presence of cave habitat was only considered incidentally as part of a vaguely described "visual survey." Further, the Technical Assistance Request describes the full extent of bat habitat review conducted, describing only a search for forested habitat within the "summer and foraging ranges" of the species in question.[42] The Service's reliance on the Corps' self-contradictory information and supporting documents for its conclusion that caves and potential cave-related habitat are categorically absent along the proposed pipeline route was arbitrary and capricious.

The Service's lackadaisical acceptance of incidental visual surveys as proof of cave absence is also counter to its own specific survey protocols for Kentucky. In 2017, the Service issued its "Supplemental Indiana Bat Survey Guidance for Kentucky," in an effort to remedy "survey data and results" that are "insufficient, invalid, or of poor quality due to a variety of factors," including "overlooking potential hibernacula."[43] The agency further notes that "[d]evelopment of these protocols is important in Kentucky" for several reasons, including the presence of "areas of Kentucky which are subject to development and other activities that could adversely affect Indiana bat hibernacula have not been adequately surveyed."[44] Further, "[t]his information is typically necessary for [ESA section 7 consultations.]"[45]

The Guidance document prescribes a phased "potential winter hibernacula survey process."[46] Phase I, Initial Project Screening, involves a "habitat assessment to determine presence of winter habitat." This assessment must be based on "on-site visits" and a "review of aerial photography and other maps."[47] The Phase I assessment must meet a long list of stringent criteria. For natural gas pipelines, "a field survey . . . of all land within one-half mile of the edge of the project

[39] BiOp at 32-33.
[40] Exh. 3 at 3.
[41] *Id.* at 5.
[42] *Id.* at 1.
[43] U.S. Fish and Wildlife Service. Supplemental Indiana Bat Survey Guidance for Kentucky (May 1, 2017), at 3.
[44] *Id.* at 2.
[45] *Id.* at 2.
[46] *Id.* at 4.
[47] *Id.* at 4.

footprint" is required to identify potential hibernacula for Indiana bats and NLEBs.[48] This survey must assess a long list of specific physical features within the survey area.[49]

The incidental "visual survey" conducted by Cardno fails to implement specific guidance the Service has issued for surveying potential Indiana bat winter hibernacula within Kentucky. Cardno did not conduct on-site visits to assess cave habitat within a half-mile of the project boundary, did not assess all required physical features therein, and limited its review of aerial photography to potential summer roosting habitat. By failing to demand adherence to the specific winter hibernacula surveys it itself has developed, the Service's conclusion that the pipeline route is absent of cave habitat was arbitrary and capricious.

2. The Service Ignored the Best Available Biological Information that the Project Area Contains Karst Cave Features.

The Service's reliance on Cardno's incidental visual survey was further arbitrary given that the agency had available to it biological information indicating that there are in fact extensive subterranean features throughout the project area, but ignored that information.[50] This information was either directly provided to the Service, or was readily available to the agency through public sources. For example:

- LG&E documented its knowledge of sinkholes in the project corridor for the Service as early as 2017, while describing a potentially-affected Kentucky glade cress population location: "[t]he soils in this area were observed as thin, bare (non-existent) in several locations, and often contained exposed rock layers within and adjacent to sinkholes."[51] In the memo, LG&E's contractor Cardno included a map that identifies 7 potential sinkholes inside the construction corridor of the pipeline.[52]

- On August 7, 2019 Keith Hurt wrote to the Corps to warn that "the gas line will run directly through a sinkhole on my property."[53]

- A deep, vertical cave with streamflow has been documented adjacent to the project area.[54] On November 14, 2019, Kimberly Brown e-mailed the Corps and notified it that, on her land in the path of the pipeline is a sinkhole. She went on to state, "[w]e believe it is the opening to a massive cave. We have seen bats coming from the ground in the area. We believe there is running water down there."[55] The email included photographs documenting the significant depth and width of the sinkhole.

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[48] Supplemental Indiana Bat Survey Guidance for Kentucky at 6.
[49] *Id.* at i.
[50] *Defs. Of Wildlife v. United States DOI*, 931 F.3d 339, 346 (4th Cir. 2019).
[51] Exh. 4 at 2.
[52] *Id.* at 6.
[53] Exh. 5.
[54] *See, e.g.,* https://app.box.com/s/2vbwnrxetgdvj3b3jbn11j54m1antabf for a video of a vertical cave entrance with a subterranean watercourse, within a quarter-mile of the project corridor on the Iola property and recorded by the property owner David Brown on September 2, 2021; *see also,* Exh. 6, for a map marking the location of these karst features where this video was recorded.
[55] Exh. 7.

- On December 1, 2019, Vanessa Allen emailed the Corps, objecting to the project on the grounds that "I have what is well-documented as 'intense karst' land. There are multiple caves, underground springs, and sinkholes that are not documented anywhere on LG&E's 'surveys' and will be in the direct path of the planned pipeline." The email included photographic documentation of the caves, sinkholes, and underground springs on her property.[56]

- On October 7, 2020, LG&E submitted to the Kentucky Division of Water a supplement to its application for a water quality certification, which noted the presence of sinkholes along the project route.[57]

- On December 16, 2020, a group consisting of local residents in the project area called Friends of Cedar Grove e-mailed comments to the Service warning of "karst and innumerable sinkholes" in the path of the pipeline.[58]

- The United States Geologic Survey and the Kentucky Geologic Map Service of the University of Kentucky both provide maps that are freely available online and indicate strong potential for karst terrain in the project area.[59] The Kentucky Geological Survey at the University of Kentucky provides a resource about the geology of Bullitt County that is also freely available online, and that provides a photograph of multiple sinkholes in eastern Bullitt County, and cautions that other karst features such as caves may be present in the area, and that many sinkholes have not been mapped.[60]

B. The Service's Consultation Determinations Are All Arbitrarily Based on the Assumption that Caves and Cave Habitat are Absent from the Pipeline Route

1. The Biological Opinion's Jeopardy Determination and Incidental Take Statement for the Indiana Bat are Unlawful

The Service's arbitrary conclusion that caves and winter hibernacula are absent from the proposed pipeline route undermines the BiOp's jeopardy analysis and ITS for the Indiana bat. By misapprehending the environmental context of the project, the Service rendered its no-

[56] Exh. 8 at 1, 4.
[57] Cardno. Water Quality Certification Supplement (October 7, 2020), at 77.
[58] Exh. 9 at 6; *see also*, Exh. 10 at 4, 6.
[59] https://www.usgs.gov/media/images/karst-map-conterminous-united-states-2020 (last checked November 18, 2021) (showing the project area in Bullitt County covered in potential karst terrain); https://kgs.uky.edu/kygeode/geomap/ (last checked November 18, 2021) (showing the project area in Bullitt County covered in potential karst terrain).
[60] https://kgs.uky.edu/kgsweb/download/misc/landuse/BULLITT/bullittissues.htm (last checked November 18, 2021) ("Cover-collapse sinkholes (outlined in red) in eastern Bullitt County are typical in areas of karst geology, which feature caves, underground streams, sinkholes, and springs. Many sinkholes such as these have not been mapped. The construction implications of these features must be addressed for any type of development.").

jeopardy conclusion "necessarily arbitrary."[61] Furthermore, by excluding potential impacts to winter hibernacula, and associated spring staging and fall swarming habitat, the Service failed to properly evaluate the effects of the project on the Indiana bat in its BiOp,[62] foreclosing a lawful analysis of the impacts of the project.[63]

With the addition of winter, fall, and spring habitat impacts to its analysis, the Service's take count could rise substantially, resulting in a more significant impact to the species and increasing the likelihood of a jeopardy determination. Such modifications in the analysis could also result in different limitations and conditions for Indiana bats in the ITS. This outcome is made more likely by the fact that the Service generated its take projection using the acreage of habitat affected as a proxy.[64]

2. The Northern Long-Eared Bat and Gray Bat Concurrences are Unlawful

The Service's arbitrary conclusion that caves, and by extension, cave habitat, are absent from the proposed pipeline route undermines the agency's concurrence with the Corps' determination that no consultation was required pursuant to the Service's programmatic biological opinion for the NLEB's 4(d) rule, as well as its concurrence with the Corps' determination that the pipeline is not likely to adversely affect the gray bat.

With respect to NLEBs, by erroneously discounting the presence of caves and potential cave habitat for both winter hibernacula and summer roosting, the Service eliminated entire categories of project impacts from the analysis, preventing a proper determination of whether the NLEB's 4(d) rule provides take coverage for the pipeline's foreseeable impacts.

The 4(d) rule makes clear that the Service must provide a project-specific consultation for NLEBs in order to achieve take coverage for this project.[65] By ignoring available biological information on potential cave habitat and tree roosting habitat within the action area[66], the Service's concurrence with the Corps' claims to take coverage under the 4(d) rule was rendered unlawful. Without an analysis of the presence of potential winter hibernacula and maternity roost trees, the Service was unable to determine whether the specific types of take involved in the project were covered under the 4(d) rule.

Similarly, the Service's arbitrary conclusion that caves and cave habitat are categorically absent from the proposed pipeline route undermines the agency's concurrence with the Army Corps' determination that the project is not likely to adversely affect gray bats, which are year-round cave obligates. A lawful effects analysis by the Service may have produced a different concurrence result, resulted in a gray bat analysis being included in the BiOp, and may have

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[61] *Appalachian Voices v. United States DOI*, 2022 U.S. App. LEXIS 3147 at 35-36 (4th Cir. 2022) (*citing* 50 C.F.R. §§ 402.02, 402.14(g)(4)).
[62] 50 C.F.R. 402.14(g)(3).
[63] *Conner v. Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988) (citing *North Slope Borough v. Andrus*, 642 F.2d 589, 608 (D.C. Cir. 1980).
[64] BiOp at 48.
[65] 81 Fed. Reg. at 1901 (Jan. 14, 2016).
[66] Exh. 1 at 2.

produced different ITS conditions for the protection of cave habitat. Because the Service gave an explanation for its decision that runs counter to the evidence before the agency, the Service's concurrence, BiOp and ITS are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the ESA with respect to gray bat impacts.

V. The Corps' Nationwide Permit 12 Verification is Invalid

The BiOp and its ITS for the Bullitt County Pipeline are unlawful, and thus the Corps' reliance on the BiOp and ITS in issuing and approving the August 26, 2021 NWP 12 verification[67] for the Bullitt County Pipeline was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the ESA.[68] The Corps explicitly incorporated the terms and conditions of the BiOp's ITS into the verification, making 404 authorization under NWP 12 conditional upon compliance with the incidental take provisions of the unlawful ITS.[69] The NWP 12 verification is therefore arbitrary, capricious, and invalid. LG&E therefore lacks valid coverage under §404 of the Clean Water Act for construction of the Bullitt County Pipeline, until such time that the Corps issues a new NWP 12 verification based on a valid biological opinion.[70] Alternatively, the Corps could provide LG&E with valid §404 coverage for this pipeline via a new, project-specific 404 permit.

VI. Conclusion

For the reasons described above, the Service's BiOp, ITS, and concurrences for the NLEB and gray bat are unlawful under the Endangered Species Act. These violations are largely based in the Service's failure to require that the Corps utilize valid surveys to determine to presence of potential cave habitat and cave-related habitat for the Indiana bat, NLEB, and gray bat. The Service's conclusion that caves and associated habitat are absent was based on unreliable and contradictory information provided by the Corps, and the Service failed to demand that the Corps apply cave survey protocol that the agency has specifically developed for Kentucky. The Service also ignored a wealth of available biological information from a variety of sources indicating that there is indeed extensive cave and karst habitat along the proposed pipeline route, ultimately reaching a conclusion that runs counter to the evidence before the agency. By arbitrarily concluding that such habitat is absent, the Service also undermined the legality of no-jeopardy determination and ITS for the Indiana bat, and its concurrence with the Corps that the project is not likely to adversely affect the NLEB and gray bat. By relying on the unlawful BiOp and ITS, the Corps has issued an invalid NWP 12 verification.

If the Service and the Corps do not take the required steps outlined herein within the next sixty days, the Center and Kentucky Resources Council intend to file suit in federal court.

Please contact me if you have any questions, or if you wish to discuss this matter.

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[67] The Corps variously refers to this document as a verification and an authorization.
[68] 16 U.S.C. § 1536(a)(2).
[69] LRL 2017 1046 jwr at pdf p.15.
[70] The legitimacy of the Corps' reliance on NWP 12 in the first instance is contingent on the outcome of ongoing federal litigation. See *Center for Biological Diversity v. U.S. Army Corps of Engineers*, No. CV-21-47-GF-BMM (D. Mont.).

Sincerely,

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Attachments:

Exhibit 1: U.S. Army Corps of Engineers. Consultation request for the Bullitt County Transmission Line. December 29, 2020.

Exhibit 2: U.S. Fish and Wildlife Service. Concurrence letter for Bullitt County Transmission Pipeline. January 15. 2021.

Exhibit 3: Cardno. Threatened and Endangered Species Technical Assistance Request to U.S. Fish and Wildlife Service. September 24, 2018.

Exhibit 4: Cardno. Environmental Habitat Assessment for Kentucky Glade Cress. November 13, 2017.

Exhibit 5: Keith Hurt. Email warning Corps of sinkhole in pipeline path on his property. August 7, 2019.

Exhibit 6: Center for Biological Diversity. Map marking sinkhole and cave location within close proximity to the project corridor on Iola property. October 6, 2021.

Exhibit 7: Kimberly Brown. E-mail to Corps re: karst features and ground-dwelling bats in pipeline path. November 14, 2019.

Exhibit 8: Vanessa Allen. Email to Corps documenting karst terrain features on her affected property. December 1, 2019.

Exhibit 9: Friends of Cedar Grove comments to Corps and Service re: sinkholes. December 16, 2020.

Exhibit 10: Friends of Cedar Grove. Email sent to Service describing sinkholes in pipeline path. December 11, 2020.