



COLORADO PARKS & WILDLIFE

1313 Sherman Street, Room 618 • Denver, Colorado 80203
Phone (303) 866-3437 • FAX (303) 866-3206
wildlife.state.co.us • parks.state.co.us

April 26, 2013

Helen Hankins, Colorado State Director
Bureau of Land Management
2850 Youngfield Street
Lakewood, Colorado 80215

John Wessels, Regional Director
Intermountain Region, National Park Service
12795 Alameda Parkway
Lakewood, Colorado 80225

Noreen Walsh, Regional Director
Mountain-Prairie Region, U.S. Fish and Wildlife Service
134 Union Boulevard
Lakewood, CO 80228

Dear Helen, John and Noreen,

We have been working with all three of your agencies to achieve the dual objectives outlined by Secretary of Interior Salazar of conserving greater sage-grouse and providing the transmission of energy generated through renewable sources in the interior west. The siting of the Transwest electric transmission line, and ultimately the Gateway South and Zephyr transmission lines, has been the subject of several recent meetings and discussions. These lines would be located within the DOI-approved corridor for electric transmission through northwest Colorado. They are in close proximity to areas where we are aggressively pursuing landscape scale efforts primarily aimed at conserving the greater sage-grouse, but also benefitting other important wildlife. One preliminary alternative for the Transwest line actually crosses an area known as the Tuttle Conservation Easement which is part of our conservation efforts. As you know we have expressed our significant concerns with this route.

Earlier this month I participated on a conference call with Steve Black, Counselor to the Secretary of Interior on this very subject. We reiterated our concerns with the route crossing the Tuttle Easement, the legal ramifications as well as how it affects our efforts in habitat conservation. Steve was very familiar with the issue and shared with us that the Bureau of Land Management (BLM) would be working closely with the National Park Service (NPS) to analyze an alternative, or alternative(s), that would go north of Highway 40 and bypass the Tuttle Easement. This alternative(s) would be included as part of the environmental impact statement (EIS) for the project.

STATE OF COLORADO

John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Rick D. Cables, Director, Colorado Parks and Wildlife
Parks and Wildlife Commission: Robert W. Bray • Chris Castilian • Jeanne Horne
Bill Kane, Vice-Chair • Gaspar Perricone • James Pribyl • John Singletary, Chair
Mark Smith, Secretary • James Vigil • Dean Wingfield • Michelle Zimmerman
Ex Officio Members: Mike King and John Salazar

I offered to Steve that Colorado Parks and Wildlife (CPW) would be providing written comments for consideration as this analysis moves forward. This letter should be considered part of our comments, as a cooperating agency, for not only the Transwest line, but also for the Gateway South and Zephyr transmission lines.

BLM has the lead role in the EIS process and will decide where these three transmission lines will be located within the approved corridor. Both the BLM and the USFWS have worked closely with our agency in wildlife conservation across Colorado, and specifically with greater sage-grouse conservation efforts in this area of the state. USFWS has invested over \$500,000 in the Tuttle Easement. NPS has a significant role in this issue because of their access road, which is part of Dinosaur National Monument and travels north of Highway 40 near the Tuttle Easement.

We believe that routing the transmission lines within the area of the approved corridor that is north of Highway 40 is environmentally, legally, and politically preferable to crossing the area south of Highway 40, which includes the Tuttle Easement. As we understand the analysis at this point in the process, the single objection to a route north of Highway 40 is that the transmission lines would cross the 200 ft. wide strip of land acquired by NPS to access Dinosaur National Monument. We understand this strip of land is to be managed, in part, to protect the scenic values of the Monument. An objective analysis of the environmental impacts of alternative routes must weigh the effects on the scenic quality of this specific area against the effects on the wildlife values protected by the Tuttle Easement. We note that the scenic values of the area just north of Highway 40 are significantly impaired by the highway itself, existing electric distribution lines, ranch houses, outbuildings, and other development. Further, this area is many miles from the Monument proper. The following discussion provides information to address these concerns and also proposes alternatives for consideration.

Colorado Parks and Wildlife (CPW) assessed the relative values of wildlife habitats that would be impacted by transmission line routes to the north of the Tuttle Conservation Easement and by transmission line routes along the previously-developed alternatives which cross the Tuttle Conservation Easement. Additionally, this letter contains an assessment of the legal and practical implications of routing these transmission lines through the Tuttle Easement, in light of the impact to the conservation values intended to be protected by this Easement.

Colorado Parks and Wildlife holds conservation easements for purposes which include protecting and managing wildlife habitats in perpetuity for big game and for a variety of state and/or federally designated special concern, threatened, or endangered species. Furthermore, all CPW conservation easements produce benefits for wildlife well beyond the maintenance of open space, generally through a cooperative management plan with

the landowner where long-term wildlife and habitat management goals are described and maintained.

CPW completed a conservation easement on 15,076 acres of the Tuttle Ranch in July 2012. The Tuttle Conservation Easement was acquired through the expenditure of over four million dollars, which included nearly \$3.75 million in allocations from Colorado hunting license fees, the Colorado Habitat Stamp fund, and Great Outdoors Colorado, together with approximately \$500,000 in U.S. Fish and Wildlife Service monies from the non-traditional Section 6 (federally listed endangered species) grant fund. The landowner also donated a significant portion of the value of the conservation easement.

The Tuttle Conservation Easement specifically protects and provides for the management of habitat for:

- Black-footed ferret (federally endangered). The protected property is nearby the only extant release area for black-footed ferret in Colorado. The conservation easement and management plan documents include provisions for eventual release of a new population of the species in Colorado.
- White-tailed prairie dog (state species of concern and previously proposed for federal listing). The protected property includes colonies of prairie dogs that have historically exceeded all other areas in northwestern Colorado for density and number of prairie dogs.
- Greater sage-grouse (federally listed Candidate species, state species of concern). The protected property contains year-long habitat for sage-grouse, including an active lek site.
- Big game wildlife (including elk, mule deer, and pronghorn antelope). The protected property contains high quality winter range for portions of the largest herds of elk and mule deer in Colorado, as well as the distal end of long-distance seasonal migratory routes for these herds. The property also provides year-long habitat for pronghorn antelope.

These wildlife habitat values are treated in greater detail in the Biological Description attached to this letter.

In addition to property-specific habitat values, the Tuttle Conservation Easement property is a keystone parcel in an ongoing effort to protect wildlife habitats at a landscape scale. CPW is concentrating a significant portion of its investment in landscape protection in the area around the Tuttle Easement. CPW is currently working with landowners to

develop additional conservation easement projects on approximately 35,500 acres that are located in the near vicinity of the Tuttle Conservation Easement. An additional part of this landscape-scale habitat protection strategy is the 8,057 acre Bitter Brush State Wildlife Area, located south and southwest of Maybell, CO and approximately 9 miles northeast of the Tuttle Easement. The Bitter Brush State Wildlife Area is managed by CPW primarily for big game winter range for resident and migratory animals, and benefits many of the same big game animals that make use of the Tuttle Easement. The BLM-managed Cross Mountain Wilderness Study Area provides additional habitat protection in the landscape surrounding the Tuttle Easement.

Given the numerical and economic importance and wide distribution of greater sage-grouse, other species of conservation need, and big game in northwestern Colorado, any proposed route for electric transmission line rights of way or corridors in northwestern Colorado will have substantial impacts on Colorado's wildlife. For each of the key wildlife species for which the Tuttle Conservation Easement was procured, habitat south of Highway 40 is of higher value and importance than habitat north of Highway 40. Specific aspects of this contention are described in the Biological Description attached to this letter.

Location of potentially three additional transmission lines across the Tuttle Conservation Easement will significantly diminish the conservation values of the property. If these additional lines were located to the south of the existing lines and spaced according to standards, the existing disturbed area would expand in a manner that would impose industrial conditions on a significant swath of the Tuttle Conservation Easement property. A long looping route to bypass the Tuttle Easement to the south and west (perhaps as much as 25 linear miles of new right of way to bypass the Conservation Easement property) would impact a considerable amount of land that does not currently have significant access or other human disturbance and makes little sense from the perspective of conserving wildlife and natural resource values.

At least two transmission line routing options exist north of Highway 40 that would bypass the Tuttle Conservation Easement. From a purely biological standpoint, transmission line routes concentrated with other development in the Highway 40 corridor (i.e., located as close as possible to the north of the highway) would have less impact on a variety of wildlife species, mainly because there is already significant human disturbance in the immediate vicinity of the highway and existing transmission lines. However, the companies' proposed 0.28 mile (1500') offset from each other means that there may not be much real concentration of rights of way, even along the Highway 40 route. While the companies have said they could narrow the spacing between lines for short distances, neither the actual minimum offset between lines nor the maximum length where this narrowed spacing can occur have been established.

That said, there is ample room for three proposed transmission lines to be routed immediately north of Highway 40. This route option would avoid the Tuttle and Crooked Wash conservation easements and would only extend the disturbance by approximately 0.75 miles to the north of the highway. While this route alternative would require an overhead crossing of the Deer Lodge Park access road into Dinosaur National Monument, this crossing would occur as much as 12 miles from the body of the Monument. This route would bisect extensive areas of private land east and west of the Deer Lodge Park road.

A second routing option north of Highway 40 would cross the Deer Lodge Park road on the State Land Board parcel located roughly two miles north from the entrance to the road. This route would cause additional disturbance to wildlife over the Highway 40 route because the transmission line rights of way could not be located contiguous with Highway 40 and would result in two parallel clusters of disturbance sources only a couple of miles apart. However, this routing would allow more of the transmission line right of way to occur on BLM land to the north of private land parcels. Those portions of private land crossed by the transmission lines would be located closer to the edge of the parcels, rather than in the center of the parcels as the Highway 40 alternative would require. This routing would reduce the distance between the transmission lines and the boundary of the Cross Mountain Wilderness Study Area and would bring the lines roughly two miles closer to the body of Dinosaur National Monument than would the Highway 40 option.

The biological information presented above and in the attachment argues for routing the proposed Transwest, Gateway South, and Zephyr electric transmission lines around the north end of the Tuttle Conservation Easement (north of Highway 40) to avoid fragmenting habitat of higher value for a variety of big game and sensitive species, including black-footed ferret and greater sage-grouse, which occur on the conservation easement itself.

In addition to the negative impact these transmission lines would have on wildlife attributes of the Tuttle Conservation Easement, there are legal and practical impacts and potential financial implications to the landowner. Section 4.R. of the Tuttle Conservation Easement specifically prohibits the construction of above ground public or private utilities, including electrical transmission lines. In order for the landowner to avoid a violation of the terms of the Conservation Easement, the landowner and CPW must first modify this document to specifically allow for installation of these lines on the property. Modification of conservation easements in Colorado is legally complex and politically charged.

In that a conservation easement in Colorado is governed at least in part by contract law, the language of the document itself initially controls the parties' ability to modify the Conservation Easement. Our Attorney General's office has advised us that the state

cannot approve any activity that would diminish the conservation values, per §4.A&B, of the Tuttle Conservation Easement. The pertinent language states:

“Any uses or activities on the Property or any portion thereof that would change, disturb, alter, diminish, or impair the Conservation Values, or that would be inconsistent with the purposes of this CE are prohibited”.

It is our position that the proposed transmission line(s) clearly diminishes those values as evidenced by this letter and the attached biological description.

Great Outdoors Colorado, (GOCO) a major funder to this project, has informed CPW that an amendment for these transmission lines would violate GOCO's funding requirements and that GOCO does not envision a funding modification that would rectify this potential violation. Compliance with CPW's Policy requirement regarding funding sources is thus unlikely. We suggest the U.S. Fish and Wildlife Service may likewise find it challenging to approve an amendment given their investment in the Tuttle Easement.

As there was a several million dollar donative component to this grant, the landowner may intend to claim Colorado Conservation Easement tax credits. If so, meeting the final requirement of the CPW Policy will also require that any private donor benefit will not be impermissible under applicable Colorado law or Federal tax codes and regulations. If Colorado Conservation Easement tax credits are claimed, the landowner will also need to be confident that the amendment does not impact the qualification of the landowner's donation for tax benefits or require payment of additional state or federal taxes or penalties.

Finally, in addition to the biological, legal and financial concerns associated with siting of these transmission lines, routes over the Tuttle Conservation Easement pose risks to the credibility and viability of CPW's conservation easement program. An ill-advised conservation easement amendment jeopardizes CPW's ability to accept conservation easements in the future. In 2010, Colorado lawmakers created the Conservation Easement Program and required Annual Certification for all conservation easement grantees for which a state tax credit would be claimed, including CPW. CPW must annually identify and justify all conservation easement amendments. Conservation easement amendments are strongly discouraged in this certification process. Should an amendment be disapproved, CPW's Certification status and its capacity to accept conservation easements would be jeopardized.

The most important consideration in a conservation easement amendment is whether it will pass the public perception test. Conservation easements in Colorado are scrutinized by the public, and unsupported conservation easements could result in a rethinking of the viability of easements as a land protection tool. One high profile amendment perceived as giving up significant land protection could erode public confidence in CPW, lead to

legislative changes, and diminish wildlife habitat protection efforts by CPW. Further, an objectionable amendment exposes CPW to lawsuits by interested community members which may result in questionable case law that governs conservation easement amendments thereafter.

Conservation easement amendments are among the most hotly discussed issues in the conservation community and we believe Colorado is ripe for legislation and case law to direct and govern easement amendments. This risk is looming should an amendment to the Tuttle Conservation Easement be viewed negatively by the public.

I have met with the landowner of the Tuttle property to discuss this transmission line routing. The landowner conveyed to me that he opposes transmission lines over this property, and would not favor any conservation easement amendment allowing them. Both CPW and the landowner oppose this routing alternative and oppose any placement that would have the negative impact on the conservation values that would be created by these lines on the Tuttle Conservation Easement property.

Your three agencies, BLM, NPS, and USFWS, have great influence and authority in the siting of these transmission lines. We have cooperated with you in defining the overall corridor across NW Colorado. As a cooperating agency and state partner, we urge that whether it is one – or all three transmission lines – they are routed in a way that bypasses the Tuttle Easement and helps us protect its conservation values. Colorado Parks and Wildlife appreciates the opportunity to provide these recommendations for inclusion in your analysis of the alternative routes for siting of these major transmission lines.

Sincerely,



Rick D. Cables
Director

CC: Rex Tuttle
TransWest Express LLC
Zephyr Transmission Line, Duke America
Gateway South Transmission Line, Rocky Mountain Power
Lise Aangeenbrug, Executive Director, GOCO
Tim Monahan, First Assistant Attorney General

Attachment: Biological Description of the Tuttle Conservation Easement