

Our Beloved American Burying Beetle

And How One Firm Is Trying To Resolve The Problem

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June 3, 2015

Long time Petroleum Engineer Fred Storer, and the engineering firm Hydration Engineering out of Bartlesville, Ok have been diligently pursuing a solution to a serious problem in the Osage concerning alleged detrimental effects on the habitat of the American Burying Beetle, an insect that U S Fish and Wildlife Service has found a place for on the List of Endangered Species in the 1973 Endangered Species Act.

The following press release, a letter from Mr. Storer to DOI Secretary Sally Jewell, and a letter of support from the BLM's Chief of the Wild Horse and Burro Division, have been made available to us by Hydration Engineering.

If they are successful, it will save our Producers much time and money as they prepare to drill new wells.

Press Release

Hydration Engineering, PLLC

Bartlesville, Oklahoma, June 3, 2015

Engineering firm asks Interior Secretary Jewell to address policies of the US Fish and Wildlife Service regarding the endangered American Burying Beetle.

Federal agencies must seek agreement with the US Fish and Wildlife Service when actions can impact species listed as endangered under the Endangered Species Act of 1973.

In recent months the Tulsa office of the US Fish and Wildlife Service has altered successful policies for addressing habit loss of the endangered American Burying Beetle. Under the new procedures Osage County oil and gas operators who need permits from the Bureau of Indian Affairs are faced with paying as much as \$30,000 per new well to private firms who have established protective facilities for the Beetle. A new well can result in an acre of Beetle habitat loss.

Two private facilities, Muddy Boggy Conservation Bank and ABB Conservation Bank, located near McAlester, Oklahoma, approved by the Tulsa FWS, are the beneficiary of this new policy.

Under the previous policy habitat loss of the beetle was mitigated by funding research and conservation. For example, the Bureau of Land Management in 2008 paid one dollar per acre to The Nature Conservancy for habitat loss of 200,000 acres for the BLM's Oklahoma Wild Horse long term holding facility program.

Similarly, under the abandoned procedures the Oklahoma Department of Transportation and the Federal Highway Administration funded research and conservation for habitat loss for highway projects such US 60 in Osage County. Responding to the new policy, ODOT/FHWA has set aside \$6 million dollars to pay for space in the Muddy Boggy Conservation Bank. ODOT has alerted county governments that their projects connected to federal dollars may fall under the new policy.

The payments to Beetle protective facilities could expand to new rural residential property because the US Department of Agriculture causes Beetle habitat loss through programs that benefit electric cooperatives and rural water districts. Rural residential land use is 2.8 percent of Osage County and is expected to grow 50% over the next 20 years (Indian Nations Council of Governments).

The policy of the Tulsa office of the Fish and Wild Service is discretionary application of the Endangered Species Act and is at odds with FWS state offices in other states where the American Burying Beetle is present.

The Bureau of Indian Affairs and the Fish and Wild Life Service are both Department of Interior agencies. Hydration Engineering has ask Interior Secretary Jewell to intervene, reestablishing policies that are both affordable and will result in the eventual removal of the American Burying Beetle from the endangered species list.



Hydration Engineering, PLLC represents individuals, companies, and organizations who are threatened by delays and costs resulting from the Tulsa FWS policy change.

The full text of Hydration Engineering's letter to Secretary Jewell follows.

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June 3, 2015

Subject: Osage/ESA/ABB/Oklahoma

The Honorable Sally Jewell
Secretary, US Department of the Interior
1849 C Street, N.W.
Washington DC 20240

Dear Madam Secretary;

Individuals, companies, and organizations with vested interests in the Osage Mineral Estate have retained my firm to find a workable alternative to the procedures established by the USFWS Oklahoma Ecological Services Field Office (FWS-OK) wherein the BIA's Osage Agency satisfies its obligation for Section 7 consultation under the Endangered Species Act as related to the listed American Burying Beetle (ABB).

Osage minerals were reserved to the tribe pursuant to the Osage Allotment Act of June 28, 1906. Fifteen thousand active wells average less than one barrel of oil per day of production. The circumstances described below prohibit or impede the maintenance of existing wells (BIA Osage Agency, Programmatic Environmental Assessment for Approving Workover Operations in Osage County, Oklahoma, April 28, 2015) and the drilling of new wells necessary to sustain production.

FWS-OK has approved two conservation banks for the benefit of the ABB; the Muddy Boggy Conservation Bank, September 25, 2013, and the ABB Conservation Bank, March 17, 2014. These conservation banks meet the requirements of the Tulsa FWS to provide protection for the ABB in perpetuity.

The Oklahoma ABB conservation banks were established by private investors with the expectation that the endangered status of the ABB would continue and Tulsa FWS's policies would create clients who would purchase credits from their banks. Considerable effort on the part of the Tulsa FWS and expense on the part of the conservation banks were required to establish this alternative for compliance with the Endangered Species Act.

On May 21, 2014 FWS-OK published the Oil and Gas Industry Conservation Plan (ICP). On March 26, 2015 FWS-OK published the Biological Opinion for the Oklahoma Department of Transportation's Transportation System Improvement Projects for year 2015-2024. These are examples of policy implementation by FWS-OK which assure customers for the ABB conservation banks.

Conservation bank credits are sold for approximately \$15,000 per acre. One to two credits are typically required to offset one acre of habitat loss. Credits are only sold in increments of one acre or more. This replaces a much less expensive and more effective alternative of funding research and conservation activities by professional entomologists to compensate for ABB habitat loss.

USFWS ABB conservation policies in Arkansas, Kansas, Nebraska, and South Dakota (states with significant ABB populations) ignore minor impacts of 1.2 to 3 acres and then follow reasonable practices for the benefit of the ABB. The USFWS in none of these states require or suggest conservation bank credits as an option for ABB habitat loss mitigation.

In 2008 under previous FWS-OK policy the Wild Horse and Burro Division, Bureau of Land Management, mitigated the ABB habit loss for 200,000 acres of wild horse facilities in Oklahoma by making a one-time payment of \$200,000 to The Nature Conservancy for ABB conservation activities. An October 3, 2014 letter from Ms. Joan Guilfoyle of the BLM is attached. (Most of the BLM's Oklahoma wild horse facilities are in Osage County.)

The Federal Highway Administration (FHWA) and the Oklahoma Department of Transportation (ODOT) until recently addressed ABB habitat loss following the abandoned FWS-OK policy as is reported on the FHWA website:

"In order to accomplish this goal (ESA compliance), ODOT, FHWA, and the USFWS have partnered with The Nature Conservancy (TNC), a non-governmental organization, to develop an initiative that would satisfy FHWA's ESA Section 7 Consultation for the ABB as well as provide for the conservation of the species within Oklahoma. The key to this initiative is TNC's American Burying Beetle Conservation Fund. The ODOT contributes monies to the Fund, which is held by TNC and used by the USFWS to enhance the conservation of the ABB in advance of potential impacts to the species from transportation projects."

FHWA website, <http://www.environment.fhwa.dot.gov/ecosystems/eei/ok09.asp>, Accessed May 24, 2015. (The FHWA website has not been updated to reflect the March 26, 2015 Biological Opinion.)

As a consequence of the March 26 Biological Opinion, ODOT has established an account with the Muddy Boggy conservation bank from which ODOT will withdraw credits as need. The initial commitment of ODOT is five to six million dollars. County Governments whose activities frequently have a federal nexus are required as well to purchase mitigation credits under the March 26 Biological Opinion.

The oil and gas ICP was established over the strong objections of the Oklahoma Independent Petroleum Association as outlined in a 20 page letter of March 4, 2013 to the FWS-OK. Although some firms with high cost projects have found it expedient to purchase conservation credits the FWS-OK ICP has exasperated the oil and gas business in Osage County.

Under the ICP operators must have surveys performed for ABB presence at an approximate cost of five thousand dollars per survey. If ABBs are present then ABB conservation credits must be purchased at a cost of 15 to 30 thousand dollars per well, and additional cost that will prematurely end the economic life of many Osage oil and gas fields. If the USFWS policies that exist in Arkansas, Kansas, Nebraska, and South Dakota were practiced in Oklahoma, Osage oil wells would be exempt due to the trivial amount of ABB habitat compromised.

Oil and gas facilities after 100 years of operation occupy approximately one percent of the surface of Osage County. The population of Osage County is forecast by the Indian Nations Council of Governments to increase 50 per cent over the next twenty years. Rural residential land use (incompatible with the ABB) is currently 2.6 percent of Osage County surface and will increase with forecast population growth in 20 years to 3.9 per cent, overwhelming any conversion of ABB habit by the oil and gas business.

(The US Department of Agriculture provides funds, loans and loan guaranties for a variety of purposes including, surface water impoundments, home loans, rural electric cooperatives, and rural water districts which directly result in increasing rural residential land use and the conversion of ABB habit. In this case the requirements of the Endangered Species Act appear to be ignored throughout the Arkansas, Kansas, Nebraska, Oklahoma, and South Dakota range of the ABB.)

The current policies of FWS-OK:

- Damage the viability of the Osage oil and gas industry, its employees, and the Osage Mineral Estate
- Divert needed road and bridge funds from the budgets of ODOT and Oklahoma counties
- Rely exclusively on conservation banks, failing to promote ABB research and extension of ABB habit in its historic range.
- Neglect important federal ESA Section 7 work related to greater impacts on ABB habitat

The ABB is but one of the challenges facing the Osage oil and gas business. Nevertheless, a change in FWS-OK policy is essential to reestablish a viable oil and gas business in the Osage.

We would be pleased to provide any assistance.

Sincerely,

Original Signed by:

Fred Storer, P.E.

cc: Chairman Evert Waller, Osage Minerals Council
Principal Chief Geoffrey M. Standing Bear, Osage Nation
Mr. Michael S. Black, Director, Bureau of Indian Affairs
Mr. Eddie Streater, Acting Regional Director, Bureau of Indian Affairs
Ms. Robin Phillips, Superintendent, Osage Agency, Bureau of Indian Affairs
Mr. Mike Patterson, Executive Director, Oklahoma Department of Transportation
Mr. Gene Wallace, Executive Director, Association of County Commissioners of Oklahoma



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
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In Reply Refer To:
4700 (260)

OCT 3 2014

Fred Storer, P.E.
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Dear Mr. Storer:

Thank you for your August 12, 2014 letter concerning the Bureau of Land Management's (BLM) compliance with the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations related to the placement of wild horses and renewal of agreements to maintain wild horses within the Osage Nation.

The BLM assures compliance with NEPA by completing site-specific Environmental Assessments (EA) for each wild horse holding facility. As part of the EA review in Oklahoma, the Program considered impacts to the American burying beetle.


In 2008, the BLM and the U.S. Fish and Wildlife Service (FWS) developed a Consultation Agreement regarding operation of the BLM's wild horse long-term holding facilities within American burying beetle habitat in Oklahoma. The Agreement provides both the BLM and the FWS an opportunity to benefit from operational improvements while meeting collective obligations under the Endangered Species Act.

As part of the conservation measures of the Agreement, the BLM provided a one-time payment of \$200,000, at the rate of \$1.00 per acre, for wild horse long-term holding facilities in American burying beetle habitat in Oklahoma. The funds were transferred to the Oklahoma Chapter of The Nature Conservancy for the purposes of the American burying beetle conservation in the tallgrass-prairie habitats of Oklahoma.

I hope our experience is useful to you. I would recommend contacting CEQ for additional information on how to achieve compliance with NEPA while minimizing the uncertainty and cost to your clients.

Please let me know if you have additional questions.

Sincerely,


Joan Guilfoyle
Chief, Wild Horse and Burro Division
Bureau of Land Management