Landmark Candidate Conservation Agreement in Oregon: A Win-Win for Species and Participants

March 17, 2004

On March 16, 2004, a historic agreement was signed between Threemile Canyon Farms (the Farm), Portland General Electric (PGE), The Nature Conservancy (TNC), the Oregon Department of Fish and Wildlife (ODFW), and the U.S. Fish and Wildlife Service (FWS) (collectively, the Parties). The Multi-Species Candidate Conservation Agreement with Assurances (MSCCAA) is a twenty-five-year land management tool under the Endangered Species Act (ESA) covering approximately 93,000 acres near Boardman, Oregon. The MSCCAA is the first multi-party, multi-species candidate conservation agreement in the nation.

In 1999, FWS issued its policy and rules for Candidate Conservation Agreements with Assurances (CCAAs) (FWS 1999, 64 Fed Reg. 32706-32716 and 64 Fed. Reg. 32726-32736). Under the policy and its implementing regulations, nonfederal property owners who commit in a CCAA to implement mutually agreed-upon conservation measures for proposed or candidate species, or species likely to become proposed or candidate species in the future, will receive assurances from FWS that additional conservation or mitigation measures above and beyond those contained in the CCAA will not be required. Furthermore, the FWS will not require the participating landowner to commit additional land, water, or financial compensation or impose additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon should a species covered by the CCAA become listed in the future.

FWS enters into a CCAA when it determines that the benefits of the conservation measures implemented by a property owner under a CCAA, when combined with those assumed benefits that would be achieved if such conservation measures were also implemented on other similarly situated properties, would preclude or remove any need to list the covered species. Qualified participants in a CCAA receive enhancement of survival permits under section 10(a)(1)(A) of the ESA, which authorizes the permittee to incidentally take species covered in a CCAA upon the listing of that species.

Located along the Columbia River near Boardman, Oregon, the covered area is primarily used for the large-scale production of agricultural commodities, including potatoes and the largest dairy operation in Oregon. The covered area also contains PGE's Boardman Plant, the state's only coal-fired power plant.
Within the covered area, the MSCCAA addresses the conservation needs of the Washington ground squirrel, ferruginous hawk, loggerhead shrike, and sage sparrow. Although currently unlisted under the ESA, each of these species is in severe decline.

In late 1999, principal representatives of the Farm joined with several environmental organizations to discuss, negotiate, and construct a comprehensive approach that would allow development and utilization of portions of the property and associated water resources in a manner that preserves the ecological integrity of areas with high conservation values and specifically protects the Washington ground squirrel and other species as well as ecological values. The Farm, represented by Perkins Coie LLP and David Evans and Associates, subsequently developed and negotiated the MSCCAA within this cooperative framework in close coordination with the other Parties.

Under the terms of the MSCCAA, the Parties will undertake certain conservation commitments, including setting aside a portion of the Farm for conservation of the covered species. This area also represents one of the last undisturbed expanses of native shrub-steppe terrain that explorers Lewis and Clark observed when they passed through the Columbia River basin nearly two centuries ago. In exchange, additional conservation or mitigation measures will not be required from the Parties should any of the covered species be federally listed under the ESA. Further, the Parties will be protected under accompanying FWS permits should any of a wide variety of covered activities incidentally take any of the four species.

The MSCCAA has been hailed as a win-win for both the covered species and the Parties. The MSCCAA will provide conservation commitments that may preclude listing the species in the future. At the same time, the Farm and PGE receive the regulatory certainty and incidental take authorization under the ESA that are required for sound business development.

For more information, please contact the Perkins Coie attorney with whom you work or Tom Lindley at (503) 727-2032 or Patrick Ryan at (206) 359-8662.

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