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Public Comments Processing, Attn: FWS-R3-ES-2019-0007  
U.S. Fish and Wildlife Service  
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**Re: Receipt of Application for Enhancement of Survival Permit and Draft Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement for Monarch Butterfly; University of Illinois at Chicago; Low-Effect Screening Form, 84 Fed. Reg. 15229 (April 15, 2019); Docket No. FWS-R3-ES-2019-0007**

To Whom It May Concern:

The National Rural Electric Cooperative Association (NRECA) respectfully submits the following comments in response to the U.S. Fish and Wildlife Service (FWS) Receipt of Application for Enhancement of Survival Permit and Draft Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement for Monarch Butterfly (84 *Fed. Reg.* 15229) (April 15, 2019).

The National Rural Electric Cooperative Association (NRECA) is the national service organization for America's Electric Cooperatives. The nation's member-owned, not-for-profit electric cooperatives constitute a unique sector of the electric utility industry – and face a unique set of challenges. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. From booming suburbs to remote rural communities, America's electric cooperatives are energy providers and engines of economic development. Electric cooperatives play a vital role in transforming communities.

America's Electric Cooperatives serve 56 percent of the nation's landmass, 88 percent of all counties, and 12 percent of the nation's electric customers, while accounting for approximately 13 percent of all electric energy sold in the United States. NRECA's member cooperatives include 62 generation and transmission cooperatives (G&Ts) and 831 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. The G&Ts generate and transmit power to nearly 80 percent of the distribution cooperatives, those cooperatives that provide power directly to the end-of-the-line consumer-owners. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. NRECA members account for about five percent of national generation and, on net, generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

The monarch butterfly occurs in as many as 49 states and the District of Columbia. Given this broad range, nearly all NRECA members could be affected if the monarch butterfly is listed under the Endangered Species Act (ESA). Similarly, nearly all NRECA members will be eligible to apply for Certificates of Inclusion under the National Monarch Butterfly Candidate Conservation Agreement with Assurances/Candidate Conservation Agreement (hereafter, CCAA/CCA or agreement), if finalized.

NRECA is a long-standing member of the Advisory Team to the CCAA Task Force, facilitated by the University of Illinois at Chicago's Rights-of-Way as Habitat Working Group, and has contributed extensive time and expertise to the development of the agreement. America's electric cooperatives own and maintain 2.6 million miles, or 42 percent, of the nation's electric distribution lines and therefore have the potential to contribute a significant amount of habitat for the monarch butterfly across their rights-of-way and other lands they manage on their systems. This nationwide multi-sector partnership represents a significant interest and investment by NRECA and its members to secure thriving populations of the monarch butterfly and other pollinators. Overall, NRECA supports the proposed integrated CCAA/CCA, but we request a few changes to improve clarity and implementation.

**Electric cooperatives support voluntary conservation.**

America's electric cooperatives take pride in being good environmental stewards of the land. For decades, our members have implemented voluntary projects to benefit "at-risk" species and their habitat, minimized avian interactions with electric infrastructure, reclaimed abandoned mine lands, reduced herbicide application through Integrated Vegetation Management, and other environmental initiatives. Therefore, NRECA and its members support the CCAA/CCA as an innovative approach to conservation through voluntary contributions that the energy and transportation sectors can make on a nationwide scale to benefit the monarch. In addition, we recognize that it is often collaborative voluntary efforts that have resulted in the greatest species conservation success stories (e.g., delisting of the bald eagle).

Whenever possible, voluntary conservation is preferable from NRECA's perspective. New species listings and resulting prohibitions on activities can impose costs to cooperatives that make it difficult to implement without passing them directly to their consumer-members. Further, should new prohibitions due to a listing being implemented differently across the country, it can result in project delays and costs associated with implementing piecemeal solutions instead of through a comprehensive approach which streamlines consultations on species impacts. For these reasons, NRECA supports the CCAA/CCA as an approach that affords operational flexibility to cooperatives in implementing conservation to benefit the monarch butterfly and to potentially preclude the need for listing the species under the ESA. We see the CCAA/CCA as the most cost-effective way for cooperatives to deliver additional monarch habitat on their systems while also focusing on their mission of delivering affordable, reliable power to their communities.

We urge the FWS to consider the CCAA/CCA and conservation commitments made under the agreement as part of its analysis under the Policy for the Evaluation of Conservation Efforts (PECE) with respect to its listing decision on the monarch butterfly. Further, the FWS should consider all conservation efforts already underway in its PECE analysis including plans such as the Mid-America Monarch Conservation Strategy and the WAFWA Western Monarch Butterfly Conservation Plan. Collectively, these plans and the CCAA/CCA when implemented represent significant collaborative efforts to provide millions of acres of habitat for the monarch across the continental United States.

**NRECA supports the nationwide collaboration to benefit the monarch butterfly through the CCAA/CCA.**

NRECA is pleased to contribute to this nationwide collaboration of organizations proactively providing habitat resources for the monarch butterfly throughout the continental United States. The CCAA/CCA represents a cross-sector collaboration on an unprecedented scale involving more than 40 organizations from the energy and transportation sectors across 48 states. The CCAA/CCA supports a nationwide strategy for monarch conservation, which is necessary to support the species across its range and migratory path. Cooperatives can play an important role in the “all-hands-on-deck” approach needed to support sustainable monarch butterfly populations.<sup>1</sup> Cooperatives own and operate 2.6 million miles of distribution lines across the country, or 42 percent of the total, and thus have a tremendous potential to contribute to this national approach by providing habitat on their rights-of-way and other lands.

Regardless of whether the FWS chooses to protect the monarch butterfly through an endangered or threatened species listing, cooperatives support providing habitat for the monarch and other pollinators. Cooperatives are already implementing projects to benefit pollinators on their systems. For example, one NRECA member has already established nearly 300 acres of pollinator habitat at its solar farms, substations, and a capped coal ash landfill. Another NRECA member currently maintains about 55 acres of pollinator habitat surrounding its solar energy facilities with plans to establish additional habitat in the near future. Yet another NRECA member has adopted ‘pollinator-friendly’ vegetation management practices along the rights-of-way of its 1,600-mile transmission line network. Cooperatives will continue this beneficial work regardless of whether the monarch butterfly is listed under the ESA.

**The CCAA/CCA provides cooperatives with regulatory certainty needed to maintain electric reliability and keep costs down for their consumer-members.**

This draft integrated CCAA/CCA gives cooperatives certainty that the conservation efforts they are already taking today and intend to enhance in the coming years can proceed without regulatory risk. Further, the flexibility given to cooperatives with Certificates of Inclusion under the agreement in choosing the conservation measures and locations on their system that are best suited for implementation gives cooperatives confidence that they can deliver monarch habitat in a cost-effective manner.

Obtaining this regulatory certainty is critical to cooperatives’ ability to properly maintain their infrastructure and deliver affordable, reliable electric power to their communities 24 hours a day, 7 days a week. It is essential for electric cooperatives to manage vegetation located on power line rights-of-way and minimize encroachments from vegetation located adjacent to the right-of-way to meet mandatory reliability standards, mitigate the risks of vegetation-related outages and other operational problems, and reduce wildfire risks. In addition to mowing and other mechanical treatments, routine vegetation management may also include activities such as the non-mechanical removal of trees and other vegetation; application of Environmental Protection Agency (EPA)-approved and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)-registered herbicides; and planting of native shrubs and grasses for restoration. Access road improvements and erosion control activities may also occur.

In addition to vegetation management, electric cooperatives must also perform required operation and maintenance (O&M) work to reduce liability risks and keep the lights on. O&M activities include such actions as the following: modifying, repairing, maintaining, or upgrading existing electric infrastructure;

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<sup>1</sup> Thogmartin et al., “Restoring monarch butterfly habitat in the Midwestern US: ‘All hands on deck’”, published 29 June 2017

adding or replacing equipment (*e.g.*, breakers, transformers, switches); pole replacement; reconductoring; and access road improvements. O&M activities occur within or immediately adjacent to previously disturbed rights-of-way and typically have short-term, negligible environmental impacts.

The CCAA/CCA gives assurances that these critical activities will be able to continue without delay should the monarch be listed. Further, it gives cooperatives confidence that they can continue to add and enhance monarch habitat on their lands without creating potential liability if new restrictions are imposed by FWS on existing habitat if the species is listed under the ESA in the future.

NRECA supports the operational flexibility given to applicants under the agreement to tailor the conservation measures they will implement to benefit the monarch to their specific needs. Cooperatives are located in 47 states across the country and thus face very different circumstances in their landscapes, climates, and other environmental factors. There is no “one-size-fits-all” that will work for all cooperatives to implement conservation for the monarch and the CCAA/CCA recognizes this important fact in its structure.

We also support that the CCAA/CCA allows for existing partners in the agreement to enroll additional lands (or modify or remove lands) even after the monarch is listed in the future. This flexibility acknowledges the reality that partners holding Certificates of Inclusion, including cooperatives, may face over the life of this 50-year agreement. As cooperatives acquire new lands, the CCAA/CCA will enable them to enroll these parcels in the agreement after any required consultation if the monarch has been listed and thereafter apply conservation measures and receive assurances for covered activities as they do throughout the rest of their enrolled lands in the agreement.

Finally, we want to highlight the agreement’s acknowledgement that constraints on conservation measures may exist due to federal, state or local laws or regulations and constraints that may exist due to the scope of a cooperative’s easements, rights-of-way, permits, etc. As you know, cooperatives cannot commit to conservation measures that are not consistent with applicable laws or regulations or within their rights granted to them through easements, rights-of-way, permits, etc. Therefore, we support the inclusion of adoption rate variances to account for those cooperatives that may wish to participate in the CCAA/CCA but due to restrictions outside of their control, such as existing land use within easements, cannot meet the adoption rate targets laid out in the agreement.

**Integrating the CCAA and CCA is important for streamlining conservation and consultations.**

Electric cooperative service territories include a mix of land ownerships including private and federal, state, and county lands. Therefore, transmission and distribution lines often cross these intermingled lands. NRECA and its members appreciate the integration of the CCA with the CCAA, which can provide greater predictability for Partners to the agreement. NRECA encourages the FWS to work with its federal land management partners to help ensure a streamlined, consistent implementation approach for efforts on federal lands. While we understand there are no assurances provided under the CCA, the ability for electric cooperatives enrolled in the agreement to implement the same conservation measures across federal lands as they do private lands is important for consistency, cost savings, and attractiveness to potential Partners.

We support the inclusion of a CCA to facilitate a streamlined ESA Section 7 consultation process for applicants to the agreement with activities on federal lands that will be applied in a consistent manner

and minimally impact project timelines. The activities covered by assurances under the CCAA that would also be implemented under the CCA (but without assurances) are those already taking place on federal lands to support the maintenance and modernization of existing infrastructure. Impacts of these activities on federal lands have already been accounted for in cooperatives' authorizations they previously received from applicable federal agencies to maintain and upgrade their powerlines and associated electric infrastructure.

Integrating a CCA with the CCAA to facilitate a nationwide approach to Section 7 consultation on the monarch regarding these activities will also help avoid different approaches being required by federal agencies across regional or state offices. Such circumstances can lead to project delays and increase costs to consumers, and can be a deterrent to potential Partners. We hope that integrating the CCA with the CCAA will help ensure NRECA members can continue to provide affordable, reliable electric services to consumer-members and that infrastructure in existing rights-of-way needed to preserve or enhance grid reliability can be maintained and modernized in a cost effective and efficient manner. We urge the FWS to reach out to federal agency partners to coordinate on expectations under the CCAA/CCA and identify areas where agencies can support each other in providing guidance and information to staff offices on CCAA/CCA implementation. We hope that federal land management agencies and other federal partners will support cooperatives enrolled in the CCAA/CCA in their efforts to implement the terms of the agreement and will not hinder implementation on federal lands including through the streamlined Section 7 process developed by the FWS for this agreement.

**Clarify whether the CCA applies to non-federal lands where an applicant is a federal borrower or holds another federal permit.**

While we support an integrated CCAA/CCA, NRECA urges the FWS to clarify its intent within the agreement regarding implementation directed by the Candidate Conservation Agreement (CCA) "for conservation measures and covered activities implemented on Federal lands, or under other Federal permits or authorization." This statement is not consistent with the rest of the agreement where reference to the CCA pertains squarely to activities on Federal lands. We urge the FWS to clarify that activities fall under the purview of the CCA only when they occur on Federal lands, and not simply because an applicant holds or applies for other Federal permits or authorizations or is a Federal borrower. For example, we urge the FWS to clarify that a cooperative that receives financing from the USDA's Rural Utilities Service (RUS) for a project on private lands will not be subject to the CCA instead of the CCAA simply because it is an RUS borrower. This is an important distinction because the assurances provided by the CCAA would not extend to any activities deemed to fall under the CCA.

**We support consortium applications to the CCAA/CCA, but request clarification on the G&T/distribution cooperative relationship.**

NRECA appreciates the agreement's provision to allow for consortiums to apply together for purposes of implementing the CCAA/CCA, but requests changes regarding the language used in the agreement's description of these consortiums. NRECA envisions a variety of consortiums could form to apply to and implement the agreement. A consortium of distribution cooperatives and the generation and transmission cooperative they own could apply to the agreement. G&Ts, as federated cooperatives, are owned by the distribution cooperatives they serve. Distribution cooperatives provide power directly to the end-of-the-line consumers. Similarly, a group of distribution cooperatives could form a consortium for purposes of implementing the CCAA/CCA or a statewide organization could form a consortium

including any of its members, which could include both G&Ts and distribution cooperatives, to administer the agreement.

However, it is important to note that federated cooperatives, like generation and transmission cooperatives or statewide associations, do not have general control (or have the authority to control) the distribution cooperatives they serve. Thus, we ask that the FWS revisit the example of generation and transmission cooperative in the agreement and modify the CCAA/CCA language to better reflect the relationship between federated cooperatives and their members. In addition, we ask that the CCAA/CCA's criteria for applying as a consortium be clarified so that the primary applicant does not need to demonstrate "authority" or "control" over the constituent members of the consortium, but rather some alternative language that better reflects the primary applicant's administrative role under the CCAA/CCA. First, this would also clarify that statewide associations or distribution cooperatives, in addition to G&Ts, may serve as the primary applicant for a consortium of cooperatives. Second, it would avoid unnecessarily creating a misunderstanding that cooperative constituents of a consortium are not independent and autonomous legal entities, especially with regards to local operational issues like vegetation management and maintenance of distribution system assets located on easements or rights-of-way. We believe such clarification could benefit other types of consortiums that may apply to the CCAA/CCA in addition to electric cooperatives, such as state departments of transportation and county or local road authorities.

We strongly support the concept of consortiums applying to the agreement and believe it will enable a greater number of cooperatives to participate. Consortiums will allow the included applicants to share administrative responsibilities in terms of monitoring, tracking and reporting as well as pool resources to pay a collective administrative fee to the Programmatic Administrator, which is the University of Illinois-Chicago. Ultimately, we support consortiums applying to the CCAA/CCA because we believe the more cooperatives that can participate in the agreement, the more conservation can be implemented throughout the continental United States to benefit the monarch butterfly.

**Keep administrative fees low.**

Finally, NRECA supports the University of Illinois-Chicago's (UIC) provision for "small contributors" with less than 500 adopted acres in the agreement regarding the calculation of the administrative fee. We appreciate UIC's recognition that small contributors may not be able to pay the same fee for an agreement that a utility with hundreds of thousands of miles of line across the U.S. can afford. All but three of NRECA's members are small businesses as defined by the Small Business Administration. Unlike investor-owned utilities, any new costs imposed on a cooperative are directly passed on to its consumer-members. America's electric cooperatives serve 88 percent of poverty persistent communities and thus its consumer-members are among the most vulnerable to bear these additional costs. Further, by keeping administrative costs low under the agreement, it enables more dollars to be available to implement conservation on the ground for the monarch butterfly, which is the ultimate purpose of the CCAA/CCA. Thus, should the Programmatic Administrator find it has collected funds more than what is necessary to administer the agreement, NRECA encourages UIC to consult with the Advisory Committee to the agreement and consider ways to return excess funds to the partners and lower the fee going forward.

Thank you for considering our comments. NRECA encourages the FWS to support voluntary conservation by finalizing its approval of the draft CCAA/CCA as expeditiously as possible to provide

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certainty to electric cooperatives' monarch habitat management plans. Please contact me at [stephanie.crawford@nreca.coop](mailto:stephanie.crawford@nreca.coop) or 703-907-5732 if you have any questions regarding these comments. We welcome an opportunity to discuss our recommendations further with your team.

Sincerely,

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