

APPENDIX 3

U.S. FISH AND WILDLIFE SERVICE
CONCURRENCE LETTER



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
5353 Yellowstone Road, Suite 308A
Cheyenne, Wyoming 82009

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In Reply Refer To:
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COPY

Memorandum

To: Assistant Field Manager of Solids, Bureau of Land Management, Casper Field Office, Casper, Wyoming

Attention: Sarah Bucklin, Environmental Protection Specialist

From: *for* Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming *Scott Hahn*

Subject: Informal Consultation for the West Antelope II Coal Lease Application

The U.S. Fish and Wildlife Service (Service) received the Bureau of Land Management's (Bureau) request for initiation of informal consultation, pursuant to the Endangered Species Act (Act) of 1973 as amended (50 CFR §402.13, for the proposed West Antelope II Coal Lease, on December 17, 2008. The environmental consequences of this competitive lease of approximately 4,109 acres of Federal coal located adjacent to the Antelope Mine in Converse and Campbell counties, Wyoming is described in a Final Environmental Impact Statement (FEIS). Appendix I of the FEIS contains the biological assessment (BA) evaluating the potential effects of the proposed lease on federally listed threatened and endangered species.

The federally listed species addressed in the BA are the threatened Ute ladies'-tresses (*Spiranthes diluvialis*), the endangered black-footed ferret (*Mustela nigripes*), the endangered blowout penstemon (*Penstemon haydenii*), and the threatened and endangered Platte River species occurring downstream in Nebraska. As stated in the BA, the Bureau made a 'no effect' determination for black-footed ferret, blowout penstemon, and the Platte River species. The Bureau made a 'may effect, not likely to adversely affect' determination for Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the West Antelope II Coal Lease on the Ute ladies'-tresses, in accordance with section 7(a)(2) of the Act, and this letter transmits the Service's concurrence.

Concurrence with Effects to Ute ladies'-tresses

There are no historical records of Ute ladies'-tresses orchids occurring in the West Antelope II Coal Lease tract; however, there are areas of potentially suitable habitat. Potentially suitable habitats in the coal lease tract occur primarily along Antelope Creek, Horse Creek and Spring Creek. As documented in the BA all areas of potentially suitable habitat in the West Antelope II Coal Lease area were surveyed for Ute ladies'-tresses, during the known flowering period for

this species, for three consecutive summers from 2006 through 2008 (Jim Orpet, Intermountain Resources, Laramie, WY pers comm.). Surveys for Ute ladies'-tresses were also conducted in portions of potentially suitable habitat in the proposed coal lease area in 1997, 1998, 1999, and 2004. No Ute ladies'-tresses orchids were found during any survey.

Based on the documentation that no Ute ladies'-tresses orchids were found during multiple years of comprehensive surveys in all areas of potentially suitable habitat, the Service concurs with the Bureau that the proposed coal lease in the West Antelope II tract is not likely to adversely affect Ute ladies'-tresses.

Future Considerations

The nearest known population of Ute ladies'-tresses to the West Antelope II Coal Lease area is located on a tributary of Antelope Creek 20 miles upstream. In the BA, the Bureau documents that Antelope Creek in the proposed coal lease area will have a 100-foot no-disturbance buffer on both sides of the stream. Thus, there is some future possibility of seed dispersal resulting in a population, protected within the buffer, becoming established in the coal lease area. Therefore, although no adverse effects to Ute ladies'-tresses will occur at this point in time, future actions affecting the buffer area could trigger both a need to survey for Ute ladies'-tresses and a re-analysis of effects.

No-effect Determinations

The Service acknowledges that the Bureau determined that the lease of Federal coal on the West Antelope II tract will have no effect on the endangered black-footed ferret, the endangered blowout penstemon, and the threatened and endangered Platte River species. When the Bureau makes "no effect" determinations, concurrence from the Service is not required, although, we appreciate receiving a copy of the data you used to make those determination for our records.

The Bureau also determined that the coal lease on the West Antelope II tract will have no effect on the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), and critical habitat for the Preble's meadow jumping mouse. Please be advised that effective August 11, 2008 listing of the Preble's meadow jumping mouse was amended to include only the Colorado portion of its range, therefore prohibitions and conservation measures provided by the Act, through sections 7, no longer apply to this subspecies in Wyoming. The Bureau is no longer obligated to consult with the Service to ensure that actions authorized, funded, or carried out in Wyoming will not likely jeopardize the continued existence of the Preble's meadow jumping mouse, or result in destruction of or adversely modify critical habitat in Wyoming.

We appreciate the Bureau's Casper Field Office efforts to ensure the conservation of threatened and endangered species. If you have any questions regarding this letter, please contact Trish Sweanor at the letterhead address or phone (307) 772-2374 extension 239.

cc: WGFD, Lander, Non-Game Coordinator (B.Oakleaf)
WGFD, Cheyenne, Statewide Habitat Protection Coordinator (M. Flanderka)