

40-1162



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

In Reply Refer To:
ES-61411/W.26/WY(WY7958)

January 28, 2004

Mr. William von Till, Project Manager
Fuel Cycle Facilities Branch
Division of fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Von Till:

Thank you for your letter of December 31, 2003, regarding the proposed revision of groundwater protection standards at the Western Nuclear Uranium Mill Site near Jeffrey City in Fremont County, Wyoming. In accordance with section 7(c) of the Endangered Species Act of 1973, as amended (Act), 50 CFR §402.14, my staff has determined that the following threatened or endangered species, or species proposed for listing under the Act, may be present in the project area.

LISTED AND PROPOSED SPECIES

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Found throughout state
Black-footed ferret (<i>Mustela nigripes</i>)	Endangered	Prairie dog towns
Ute ladies'-tresses (<i>Spiranthes diluvialis</i>)	Threatened.	Seasonally moist soils and wet meadows of drainages below 7000 feet elevation.

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If the proposed action will lead to water depletions (consumption) in the Platte River System, impacts to threatened and endangered species inhabiting the downstream reaches of this system should be included in the evaluation.

Platte River species

Endangered

Downstream riverine habitat
of the Platte River in
Nebraska

Bald eagle: While habitat loss still remains a threat to the bald eagle's full recovery, most experts agree that its recovery to date is encouraging. Adult eagles establish life-long pair bonds and build huge nests in the tops of large trees near rivers, lakes, marshes, or other wetland areas. Although bald eagles may range over great distances, they usually return to nest within 100 miles of where they were fledged. During winter, bald eagles gather at night to roost in large mature trees, usually in secluded locations that offer protection from harsh weather. Bald eagles often return to use the same nest and winter roost year after year.

In order to reduce potential adverse effects to the bald eagle, a disturbance-free buffer zone of 1 mile should be maintained around eagle nests and winter roost sites. Activity within 1 mile of an eagle nest or roost may disturb the eagles and result in take. If a disturbance-free buffer zone of 1 mile is not practicable, then the activity should be conducted outside of February 15 through August 15 to protect nesting birds and November 1 through April 15 to protect roosting birds.

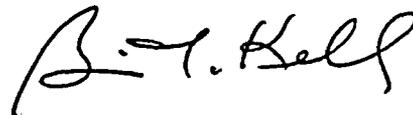
Black-footed ferret: Black-footed ferrets may be affected if prairie dog towns are impacted. If black-tailed prairie dog (*Cynomys ludovicianus*) towns or complexes greater than 79 acres or white-tailed prairie dog (*Cynomys leucurus*) towns or complexes greater than 200 acres will be disturbed, surveys for ferrets are recommended in order to determine if the action will result in an adverse effect to the species. Surveys are recommended even if only a portion of the town or complex will be disturbed. According to the *Black-Footed Ferret Survey Guidelines* (USFWS 1989), a prairie dog complex consists of two or more neighboring prairie dog towns less than 7 km (4.3 miles) from each other. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

Ute ladies'-tresses: Ute ladies'-tresses is a perennial, terrestrial orchid with stems 8 to 20 inches tall, and white or ivory flowers clustered into a spike arrangement at the top of the stem. *Spiranthes* blooms from late July through August, however, depending on location and climatic conditions, it may bloom in early July or still be in flower as late as early October. *Spiranthes* is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams where it colonizes early successional point bars or sandy edges. The elevation range of known occurrences is 4,200 to 7,000 feet in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows. Soils where *Spiranthes* have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. *Spiranthes* is not found in heavy or tight clay soils or in extremely saline or alkaline soils. *Spiranthes* seems intolerant of shade and small scattered groups are found primarily in areas where vegetation is relatively open. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. The U.S. Fish and Wildlife Service (Service) does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training or services.

Platte River water depletions: Water depletions to the Platte River system may affect the federally listed whooping crane (*Grus americana*), interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*), bald eagle (*Haliaeetus leucocephalus*), Eskimo curlew (*Numenius borealis*), and western prairie fringed orchid (*Platanthera praeclara*). In addition, depletions may contribute to the destruction or adverse modification of designated critical habitat for the whooping crane, and proposed critical habitat for the northern Great Plains breeding population of the piping plover. Depletions include evaporative losses and/or consumptive use, often characterized as diversions from the Platte River or its tributaries less return flows. Project elements that could be associated with depletions to the Platte River system include, but are not limited to, ponds (detention/recreation/irrigation storage/stock watering), lakes (recreation/irrigation storage/municipal storage/power generation), reservoirs (recreation/irrigation storage/municipal storage/power generation), created or enhanced wetlands, hydrostatic testing of pipelines, wells, diversion structures, dust abatement, and water treatment facilities. Any actions that may result in a water depletion to the Platte River system should be identified. The document should also include an estimate of the amount and timing of average annual water depletion (both existing and new depletions), describe methods of arriving at such estimates, describe location of where depletion occurs as specifically as possible, if and when it will be returned to the system and what the depletion is being used for. Note that if the project has peculiarities or oddities, the Service may have more specific questions regarding these particular water depletions.

If you have any further questions please contact Pedro 'Pete' Ramirez of my staff at the letterhead address or phone (307) 772-2374, extension 36.

Sincerely,



Brian T. Kelly
Field Supervisor
Wyoming Field Office

cc: Statewide Habitat Protection Coordinator, WGFD, Cheyenne, WY
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)
WDEQ, Administrator, Water Quality Division (M. Thiesse)