



United States Department of the Interior

FISH AND WILDLIFE SERVICE
 New Mexico Ecological Services Field Office
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 Phone: (505) 346-2525 Fax: (505) 346-2542

September 20, 2004

Cons. #2-22-04-I-0695

Jill S. Caverly, P.E.
 U.S. Nuclear Regulatory Commission
 Mailstop: T8F42
 Washington, DC 20555

Dear Ms. Caverly:

Thank you for your August 4, 2004, email requesting a list of Threatened and Endangered Species for the proposed action at Rio Algom Mining LLC's Ambrosia Lake uranium mill tailings site. The proposed project is located in McKinley County, New Mexico.

We have enclosed a current list of federally endangered, threatened, proposed, and candidate species, and species of concern that may be found in McKinley County, New Mexico¹. Under the Endangered Species Act, as amended (Act), it is the responsibility of the Federal action agency or its designated representative to determine if a proposed action "may affect" endangered, threatened, or proposed species, or proposed or designated critical habitat, and if so, to consult with us further. If your action area has suitable habitat for any of these species, we recommend that species-specific surveys be conducted during the flowering season for plants and the appropriate time for wildlife to evaluate any possible project-related impacts. Please keep in mind that the scope of federally listed species compliance also includes any interrelated or interdependent project activities (e.g., equipment staging areas or offsite borrow material areas) and any indirect or cumulative effects.

Candidates and species of concern have no legal protection under the Act and are included in this document for planning purposes only. We monitor the status of these species. If significant declines are detected, these species could potentially be listed as endangered or threatened. Therefore, actions that may contribute to their decline should be avoided. We recommend that candidates and species of concern be included in your surveys.

¹ Additional information about these species is available on the Internet at <http://nmrareplants.unm.edu>, <http://nmnhp.unm.edu/bisonm/bisonquery.php>, and <http://ifw2es.fws.gov/endangeredspecies>.

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Under Executive Orders 11988 and 11990, Federal agencies are required to minimize the destruction, loss, or degradation of wetlands and floodplains, and preserve and enhance their natural and beneficial values. We recommend you contact the U.S. Army Corps of Engineers for permitting requirements under section 404 of the Clean Water Act if your proposed action could impact floodplains or wetlands. These habitats should be conserved through avoidance, or mitigated to ensure no net loss of wetlands function and value.

The Migratory Bird Treaty Act (MBTA) prohibits the taking of migratory birds, nests, and eggs, except as permitted by the U.S. Fish and Wildlife Service. To minimize the likelihood of adverse impacts to all birds protected under the MBTA, we recommend construction activities occur outside the general migratory bird nesting season of March through August, or that areas proposed for construction during the nesting season be surveyed, and when occupied, avoided until nesting is complete. Activities that create open lagoons, tanks, or evaporation ponds have the potential to contain wastewater with salts and brine, trace elements, nutrients, heavy metals, organic chemicals, petroleum, solvents, pesticides, antibiotics, veterinary chemicals, or pathogenic microorganisms which may pose a health risk to migratory birds and other wildlife. Migratory birds often do not distinguish between wastewater lagoons and natural waterbodies, and can be attracted to these open lagoons to drink, rest, and perhaps feed on any algae and invertebrates found there. Therefore, if necessary, we recommend that open structures that contain toxic conditions be constructed with an appropriate exclusion methodology (e.g., nets, fences, enclosed tanks, hazing, etc.) to prevent migratory bird access or harm. Facilities that are designed to safeguard migratory birds, and incorporate preventative measures, also tend to be protective of other wildlife. Migratory birds are a legally protected resource and it is unlawful to poison any migratory bird unless authorized under a permit issued by the Department of the Interior. For more information, contact the Service's Office of Migratory Birds or see their webpages at <<http://birds.fws.gov/>>.

With regard to fish and wildlife resources, the Environmental Analysis (EA) should assess the impacts of the proposed project and its alternatives on species' populations and their habitats, with an emphasis on wetlands, waters of the United States, and native wildlife and plants. The EA should clearly state the purpose and need of the project, and should include a thorough description of the project area.

We suggest you contact the New Mexico Department of Game and Fish, and the New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division for information regarding fish, wildlife, and plants of State concern.

Thank you for your concern for endangered and threatened species and New Mexico's wildlife habitats. We look forward to reviewing and providing comments on the draft EA for this project

Jill S. Caverly, P.E.

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when it becomes available. In future correspondence regarding this project, please refer to consultation # 2-22-04-I-0695. If you have any questions about the information in this letter, please contact Rawles Williams at the letterhead address or at (505) 761-4704.

Sincerely,

Susan MacMullin

Susan MacMullin
Field Supervisor

Enclosure

cc: (w/o enc)

Director, New Mexico Department of Game and Fish, Santa Fe, New Mexico

Director, New Mexico Energy, Minerals, and Natural Resources Department, Forestry
Division, Santa Fe, New Mexico

FEDERAL ENDANGERED, THREATENED,
PROPOSED, AND CANDIDATE SPECIES
AND SPECIES OF CONCERN IN NEW MEXICO

Consultation Number 2-22-04-I-0695

September 20, 2004

McKinley County

ENDANGERED

- Black-footed ferret (*Mustela nigripes*) *
- Southwestern willow flycatcher (*Empidonax traillii extimus*)

THREATENED

- Bald eagle (*Haliaeetus leucocephalus*)
- Mexican spotted owl (*Strix occidentalis lucida*) with critical habitat
- Zuni fleabane (*Erigeron rhizomatus*)

CANDIDATE

- Yellow-billed cuckoo (*Coccyzus americanus*)
- Zuni bluehead sucker (*Catostomus discobolus*)

SPECIES OF CONCERN

- American peregrine falcon (*Falco peregrinus anatum*)
- Arctic peregrine falcon (*Falco peregrinus tundrius*)
- Black tern (*Chlidonias niger*)
- Northern goshawk (*Accipiter gentilis*)
- Mountain plover (*Charadrius montanus*)
- Western burrowing owl (*Athene cunicularia hypugea*)
- New Mexico silverspot butterfly (*Speyeria nokomis nitocris*)
- San Juan checkerspot butterfly (*Euphydryas anicia chuskae*)
- Acoma fleabane (*Erigeron acomanus*)
- Goodding's onion (*Allium gooddingii*)
- Parish's alkali grass (*Puccinellia parishii*)
- Sivinski's fleabane (*Erigeron sivinskii*)

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- Endangered = Any species which is in danger of extinction throughout all or a significant portion of its range.
- Threatened = Any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
- Candidate = Candidate Species (taxa for which the Service has sufficient information to propose that they be added to list of endangered and threatened species, but the listing action has been precluded by other higher priority listing activities).
- Proposed = any species of fish, wildlife or plant that is proposed in the Federal Register to be listed under section 4 of the Act.
- Species of Concern = Taxa for which further biological research and field study are needed to resolve their conservation status OR are considered sensitive, rare, or declining on lists maintained by Natural Heritage Programs, State wildlife agencies, other Federal agencies, or professional/academic scientific societies. Species of Concern are included for planning purposes only.
- * = Survey should be conducted if project involves impacts to prairie dog towns or complexes of 200-acres or more for the Gunnison's prairie dog (*Cynomys gunnisoni*) and/or 80-acres or more for any subspecies of Black-tailed prairie dog (*Cynomys ludovicianus*). A complex consists of two or more neighboring prairie dog towns within 4.3 miles (7 kilometers) of each other.