



# 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/WY9796

SEP 28 2005

Scott C. Flanders, Deputy Director,  
DWMEP/NMSS  
Mail Stop: T7-J9  
Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Dear Mr. Flanders:

Thank you for your letter and attached project information regarding the addition of the Reynolds Ranch area to PRI's operational area for the Smith Ranch/Highlands Uranium Project (SR/HUP) in-situ leach uranium mining facility in Converse County, Wyoming. The Reynolds Ranch area is contiguous with the northern boundaries of the SR/HUP facility and encompasses all or portions of the following sections, Township 36 North, Range 73 West, Sections 5, 6, 7, 17 and 18; Township 36 North, Range 74 West, Sections 1, 2, 11, 12, 13 and 14; Township 37 North, Range 73 West, Sections 30, 31 and 32; Township 37 North, Range 74 West, Sections 25, 26, 34, 35 and 36, Sixth Principal Meridian. Your letter dated August 29, 2005, was received in the U.S. Fish and Wildlife Service's (Service) Wyoming Field Office on September 2. In your letter you requested the Service provide any information we may have concerning the presence of endangered or threatened species or critical habitat within the action area pursuant to the Endangered Species Act of 1973 (Act), as amended, 16 U.S.C. 1531 *et seq.*

### **Federal Agency Responsibilities**

In response to your request to review the proposed action, we are providing you with comments on (1) threatened, endangered and candidate species, (2) migratory birds, and (3) wetlands and riparian areas. The Service provides recommendations for protective measures for threatened and endangered species in accordance with the Act. Protective measures for migratory birds are provided in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Wetlands are afforded protection under Executive Orders 11990 (wetland protection) and 11988 (floodplain management), as well as section 404 of the Clean Water Act. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act and the Fish and Wildlife Act of 1956, as amended, 70 Stat. 1119, 16 U.S.C. 742a-742j.

### Threatened and endangered species

In accordance with section 7 of the Act, I am providing you with information on threatened or endangered species, or species proposed for listing under the Act, that may be present in the project areas.

<u>Species</u>	<u>Status</u>	<u>Habitat</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

#### 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 1 through August 15 to protect nesting birds and November 1 through April 15 to protect roosting birds.

If power lines are built with Project implementation, they should be built, at a minimum, to standards identified in the *Suggested Practices for Raptor Protection on Power Lines -The State of the Art in 1996* (Edison Electric Institute/Raptor Research Foundation) to minimize electrocution potential. The Service has the following more specific recommendations that reaffirm and compliment those presented in the Practices. The Agency should ensure that these additional standards, to minimize bald eagle mortalities associated with utility transmission lines, be incorporated into the stipulations for all project actions (i.e. Application for Permit to Drill/POD, Right-of-way grants, or Sundry Notices). It should be noted that these measures vary in their effectiveness to minimize mortality, and may be modified as they are tested in the field and laboratory. Local habitat conditions should be considered in their use. The following represents areas where bald eagle protection measures should be applied when designing/constructing new distribution lines or modifying existing facilities:

### **For new distribution lines and facilities**

1. Distribution lines should be buried where feasible.
2. Raptor-safe structures (e.g., with increased conductor-conductor spacing) are to be used that address adequate spacing for bald eagles (i.e., minimum of 60 inches for bald eagles).
3. Equipment installations (e.g., overhead service transformers, capacitors, reclosers, etc.) should be made bald eagle safe (e.g., by insulating the bushing conductor terminations and by using covered jumper conductors).
4. Jumper conductor installations (e.g. corner, tap structures, etc.) should be made bald eagle safe by using covered jumpers or providing adequate separation.
5. Arrestor and cutout covers should be employed when necessary.
6. Lines should avoid high avian use areas such as wetlands, prairie dog towns, and grouse leks.

### **For modification of existing facilities**

1. We suggest identifying and rectifying problem structures that include dead ends, tap or junction poles, transformers, reclosers and capacitor banks or other structures with less than 60 inches between conductors or a conductor and ground.
2. Exposed jumpers should be covered.
3. Any pole top ground wires should be capped.
4. Insulating links of suitable length should be installed in such guy wire installations so as to maintain a sixty inch clearance between energized conductors and guy wires.
5. On transformers, install insulated bushing covers, covered jumpers, and cutout covers and arrestor covers, if necessary.
6. When bald eagle mortalities occur on existing lines and structures, bald eagle protection measures should be applied (e.g., modify for raptor-safe construction, install safe perches or perching deterrents, nesting platforms or nest deterrent devices, etc.)
7. In areas where midspan collisions are a problem, install line-marking devices that have been proven effective. All transmission lines that span streams and rivers, should maintain proper spacing and have markers installed.

### **Black-footed ferret**

Black-footed ferrets may be affected if prairie dog towns are impacted. Please be aware that black-footed ferret surveys are no longer recommended in black-tailed prairie dog towns statewide as per our enclosed February 2, 2004, letter. However, we encourage the federal agency to protect prairie dog towns for their value to the prairie ecosystem and the myriad of species that rely on them. We further encourage you to analyze potentially disturbed prairie dog towns for their value to future black-footed ferret reintroduction.

### **Ute ladies'-tresses**

Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial, terrestrial orchid, 8 to 20 inches tall, with white or ivory flowers clustered into a spike arrangement at the top of the stem. *S. diluvialis* typically 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. *S. diluvialis* 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 *S. diluvialis* have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. *S. diluvialis* is not found in heavy or tight clay soils or in extremely saline or alkaline soils. *S. diluvialis* 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. *S. diluvialis* is difficult to survey for primarily due to its unpredictability of emergence of flowering parts and subsequent rapid desiccation of specimens. The 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.

### **Designated Critical Habitat**

The Service currently has not designated critical habitat for any species within or near the project area. The nearest designated critical habitat would be for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in northern Albany County.

### **Migratory Birds**

Please recognize that consultation on listed species may not remove your obligation to protect the many species of migratory birds, including eagles and other raptors protected under the MBTA and BGEPA. The MBTA, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the MBTA states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The BGEPA, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

In order to promote the conservation of migratory bird populations and their habitats, the Service recommends the Nuclear Regulatory Commission implement those strategies outlined within the Memorandum of Understanding directed by the President of the U.S. under the Executive Order 13186, where possible.

**Wetlands/Riparian Areas**

Wetlands perform significant ecological functions which include: (1) providing habitat for numerous aquatic and terrestrial wildlife species, (2) aiding in the dispersal of floods, (3) improving water quality through retention and assimilation of pollutants from storm water runoff, and (4) recharging the aquifer. Wetlands also possess aesthetic and recreational values. The Service recommends measures be taken to avoid and minimize wetland losses in accordance with Section 404 of the Clean Water Act and Executive Order 11988 (floodplain management) as well as the goal of "no net loss of wetlands." If wetlands may be destroyed or degraded by the proposed action, those wetlands in the project area should be inventoried and fully described in terms of their functions and values. Acreage of wetlands, by type, should be disclosed and specific actions should be outlined to avoid, minimize, and compensate for all unavoidable wetland impacts.

Riparian or streamside areas are a valuable natural resource and impacts to these areas should be avoided whenever possible. Riparian areas are the single most productive wildlife habitat type in North America. They support a greater variety of wildlife than any other habitat. Riparian vegetation plays an important role in protecting streams, reducing erosion and sedimentation as well as improving water quality, maintaining the water table, controlling flooding, and providing shade and cover. In view of their importance and relative scarcity, impacts to riparian areas should be avoided. Any potential, unavoidable encroachment into these areas should be further avoided and minimized. Unavoidable impacts to streams should be assessed in terms of their functions and values, linear feet and vegetation type lost, potential effects on wildlife, and potential effects on bank stability and water quality. Measures to compensate for unavoidable losses of riparian areas should be developed and implemented as part of the project.

Plans for mitigating unavoidable impacts to wetland and riparian areas should include mitigation goals and objectives, methodologies, time frames for implementation, success criteria, and monitoring to determine if the mitigation is successful. The mitigation plan should also include a contingency plan to be implemented should the mitigation not be successful. In addition, wetland restoration, creation, enhancement, and/or preservation does not compensate for loss of stream habitat; streams and wetlands have different functions and provide different habitat values for fish and wildlife resources.

Best Management Practices (BMPs) should be implemented within the project area wherever possible. BMPs include, but are not limited to, the following: installation of sediment and erosion control devices (e.g., silt fences, hay bales, temporary sediment control basins, erosion control matting); adequate and continued maintenance of sediment and erosion control devices to insure their effectiveness; minimization of the construction disturbance area to further avoid

streams, wetlands, and riparian areas; location of equipment staging, fueling, and maintenance areas outside of wetlands, streams, riparian areas, and floodplains; and re-seeding and re-planting of riparian vegetation native to Wyoming in order to stabilize shorelines and streambanks.

Thank you for your efforts to ensure the conservation of threatened and endangered species in Wyoming. If you have any questions regarding this letter or your responsibilities under the Act, please contact Bradley Rogers at (307) 684-1046.

Sincerely,



Brian T. Kelly  
Field Supervisor  
Wyoming Field Office

Enclosure (1)

cc: FWS, Fish and Wildlife Biologist, Buffalo Field Office, Buffalo, WY (B. Rogers)  
WDEQ, Land Quality Division, Cheyenne, WY (L. Spackman)  
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)  
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)

#### References

Edison Electric Institute and the Raptor Research Foundation. 1996. Suggested Practices for Raptor Protection on Power Lines - The State of the Art in 1996. Washington, D.C.

Enclosure



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
4000 Airport Parkway  
Cheyenne, Wyoming 82001

In Reply Refer To:  
ES-61411/BFF/WY7746

February 2, 2004

Dear Interested Party:

This letter is to inform you that black-footed ferret (*Mustela nigripes*) surveys are no longer necessary in black-tailed prairie dog colonies statewide or in white-tailed prairie dog towns except those noted in the attachment. In response to requests from numerous entities and our own review of the situation regarding ferret surveys, the U.S. Fish and Wildlife Service (Service) and others have been evaluating the potential for a previously unidentified black-footed ferret population to occur in Wyoming and the need for conducting black-footed ferret surveys across the entire state. This issue has been especially pertinent when evaluating various activities for compliance with the Endangered Species Act of 1973 (Act), as amended (16 USC 1531 *et seq.*).

The black-footed ferret was listed as an endangered species in 1967, prior to the Act (under the Endangered Species Preservation Act of 1966). The Act prohibits the take of listed species without proper permits and places an additional requirement on activities funded, authorized or carried out by Federal agencies to ensure that such actions will not jeopardize the continued existence of any listed species. The latter process is known as interagency consultation and is outlined in section 7(a)(2) of the Act (50 C.F.R. § 402.13).

The Service developed the 1989 *Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act* (Survey Guidelines) to assist with section 7 consultations for ferrets. The Survey Guidelines provide a mechanism to evaluate the possibility of locating existing ferrets in prairie dog colonies by examination of the size, density, and juxtaposition of existing prairie dog colonies. The key points of the strategy are to determine the existence of ferrets or an area's potential for ferret recovery and either may be used in section 7 consultations when determining whether an action may affect the black-footed ferret. The Survey Guidelines can be followed by interested parties (federal agencies and their partners) during the section 7 consultation process to make determinations on whether an activity may adversely affect ferrets. However, an unintended drawback to the Survey Guidelines is that repetitive surveys may be undertaken to evaluate possible impacts to ferrets on prairie dog colonies that have already been searched or that didn't present any realistic opportunities for ferret reintroduction.

## Enclosure

The Service has been coordinating with the Wyoming Game and Fish Department in reviewing information about the current and historic status of prairie dog towns throughout Wyoming. In addition to the status review, we have also been reviewing the history of black-footed ferret surveys to determine whether the survey guidelines should continue to be applied across the entire state. Through this process, the Service has developed an initial list of blocks of habitat that are not likely to be inhabited by black-footed ferrets. In these areas, take of individual ferrets and effects to a wild population are not an issue and surveys for ferrets are no longer recommended. The term "block clearance" has often been used to describe this type of approach. This initial list is based largely on the quality of the habitat today, as well as information regarding past population bottlenecks that may have resulted from plague and poisoning events in particular areas and may have led to the loss of ferrets in the area.

Additional information regarding the survey effort on the specific areas not yet block-cleared is currently being reviewed by the Service. Based on this review, the Service will likely add several blocks of habitat to the list in the future. The Service will continue to collect and review information on any remaining areas to determine if they should be added to the list of areas cleared from the survey recommendation. Therefore, prior to conducting surveys, you should coordinate with the Service to determine which specific areas are recommended for surveys. We have attached our initial list of areas cleared from the ferret survey recommendation. We believe this approach is not only biologically defensible, but also allows all parties involved to focus survey effort and resources on those areas where the likelihood of discovering wild ferrets is greatest.

Please note that "block clearance" must not be interpreted to mean that the area is free of all value to black-footed ferrets. These areas, or blocks, are merely being cleared from the need for ferret surveys. Therefore, this clearance from the survey recommendations reflects only the negligible likelihood of a wild population of ferrets occurring in an area. It does not provide insight into an area's value for survival and recovery of the species through future reintroduction efforts. Nor does this clearance relieve a Federal agency of its responsibility to evaluate the effects of its actions on the survival and recovery of the species. For example, while an action proposed in a cleared area needs no survey and is not likely to result in take of individuals, the action could have an adverse effect upon the value of a prairie dog town as a future reintroduction site and should be evaluated to determine the significance of that effect. Consultation with the Service is appropriate for any agency action resulting in an effect significant enough to diminish a site's value as a future reintroduction site. Additionally, block clearance of an area does not imply that other values of maintaining the integrity of the prairie dog ecosystem are unimportant.

We appreciate your efforts to conserve listed species. Without the valuable information collected to date in association with black-footed ferret surveys, we would not be able to undertake this effort to focus ferret surveys on the most promising habitat.

Enclosure

If you have any questions regarding this letter or your responsibilities under the Act, please contact Mary Jennings of my staff at the letterhead address or phone (307) 772-2374, extension 32.

Sincerely,

*/s/ Brian T. Kelly*

**Brian T. Kelly  
Field Supervisor  
Wyoming Field Office**

Enclosure (1)

**cc: WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)  
FWS, BFF Recovery Coordinator, Laramie, WY (M. Lockhart)**

Enclosure

**Black-footed Ferret Survey Block Clearance List**

February 1, 2004

The following blocks of black-footed ferret habitat are cleared from the recommendation for ferret surveys:

1. All black-tailed prairie dog towns in Wyoming
2. All white-tailed prairie dog towns in Wyoming EXCEPT those identified in the following table.

Complex Name	Townships	Ranges	Complex Name	Townships	Ranges
Baxter Basin	T18, T19, T20	R103, R104	Fifteen Mile	T47-T49 T48	R97, R98 R96 (west half)
Big Piney	T 28 T29, T30, T31	R111, R112 R109-R111	Flaming Gorge	T12, T13 T12-T14 T13	R109 R108 R107
Bolton Ranch	T17 T18, T19	R86, R88 R86-R88	Manderson	T47, T48 T49	R90, R91 R91
Carter	T16, T17 T18	R114-R116 R115	Moxa	T15, T16 T17, T18 T19, T20 T21 T22, T23 T24	R112, R113 R111-R113 R111-R114 R110-R113 R111-R113 R112
Continental Divide	T16 T17 T18 T19 T20	R93-95 R92-95, 98-100, 97-98 R92-96, 98-99 R92-96 R92-95	Pathfinder	T27 T28 T29	R85, R86 R85-R89 R85, R89
Cumberland	T16 T17-T19 T19, T20	R118 R117 R116	Saratoga	T14 T15 T16	R82, R83 R82-R84 R83-R85
Dad	T15, T16 T17	R90-R93 R92, R93	Seminole	T23, T24	R84, R85
Desolation Flats	T13 T14 T15 T16	R93-95 R93-94 R93-94, 96 R93-96	Shamrock Hills	T22, T23 T24, T25 T26	R89, R90 R89 R89, R90