

StrataRossKenExSEISCEm Resource

From: O'Donnell, Donna <donna_odonnell@fws.gov>
Sent: Wednesday, April 06, 2016 7:09 PM
To: Maria Boroja; Stephanie Nash; Robert Stewart; jessie.muir_quintero@nrc.gov; Zack Walker; Mary Flanderka; Nancy Stange; StrataRossKenExSEIS Resource
Cc: Kimberly Dickerson
Subject: [External_Sender] WY16CPA0157a - Kendrick Expansion Area In Situ Uranium Recovery Project
Attachments: WY16CPA0157a_Response_Kendrick Expansion_20160406.pdf

Attached.

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From: ODonnell, Donna

Created By: donna_odonnell@fws.gov

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
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APR 06 2016



In Reply Refer To:
06E13000-2016-CPA-0157a
ER16-0140

Lydia W. Chang, Branch Chief
U.S. Nuclear Regulatory Commission
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards
Washington, D.C. 20555-0001

Dear Ms. Chang:

We are in receipt of your letter dated March 16, 2016, received in our office on March 21, requesting the U.S. Fish and Wildlife Service (Service) provide a list of threatened or endangered species or critical habitat listed under the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531 *et seq.* for the proposed license application by Strata Energy, Inc., Kendrick Expansion Area *In Situ* Uranium Recovery Project (Project) referenced Docket No. 40-09091. The Project area consists of approximately 7,784 acres of primarily privately-owned land located in Oshoto, Crook County, Wyoming.

In response to your request, the Service is providing recommendations for protective measures for threatened and endangered species in accordance with the ESA. We are also providing recommendations concerning migratory birds in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703, and the Bald and Golden Eagle Protection Act (Eagle Act), 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, as amended, 16 U.S.C. 661 *et seq.*, and the Fish and Wildlife Act of 1956, as amended, 16 U.S.C. 742a-742j.

The Service has transitioned to a new online program to deliver species lists: the Information, Planning, and Conservation (IPaC) system. To obtain a current list of endangered, threatened, proposed, and candidate species and their designated and proposed critical habitat that occur in or may be affected by actions associated with your proposed project, please visit our website at <http://ecos.fws.gov/ipac/>. This website will provide you with an immediate response to your

species list request. The response will also include information regarding other Service trust authorities.

In accordance with section 7(c) of the ESA, we have determined that the following species or their designated habitat may be present in the proposed project area. We would appreciate receiving information as to the current status of each of these species within the proposed project area.

**Endangered, Threatened, Proposed, and Candidate Species
And Their Designated and Proposed Critical Habitat That Occur
In or May Be Affected by Actions in the Proposed Project Area**

April 2016

<u>Species</u>	<u>Scientific Name</u>	<u>Status</u>	<u>Habitat</u>
Ute Ladies'-tresses	<i>Spiranthes diluvialis</i>	Threatened	Seasonally moist soils and wet meadows of drainages below 7,000 ft. elevation
Northern Long-eared Bat	<i>Myotis septentrionalis</i>	Threatened	Under bark, in cracks, crevices, and cavities of trees in upland forests; also in buildings and under bridges

Ute Ladies'-tresses: Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial orchid, 8 to 20 inches tall, with white or ivory flowers clustered into a spike arrangement at the top of the stem. Ute ladies'-tresses typically blooms from late July through August. However, it may bloom in early July or still be in flower as late as early October, depending on location and climatic conditions. Ute ladies'-tresses 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 (although no known populations in Wyoming occur above 5,500 feet). Soils where Ute ladies'-tresses have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. Ute ladies'-tresses is not found in heavy or tight clay soils or in extremely saline or alkaline soils. Ute ladies'-tresses typically occurs in small, scattered groups found primarily in areas where vegetation is relatively open.

Many orchid species take 5 to 10 years to reach reproductive maturity; this appears to be true for Ute ladies'-tresses (FR 57 2048). Furthermore, reproductively mature plants do not flower every year. For these reasons, 2 to 3 years of surveys are necessary to determine presence or absence of Ute ladies'-tresses. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys.

Northern Long-Eared Bat: The northern long-eared bat (*Myotis septentrionalis*) is listed under the ESA as a threatened species (80 FR 17974; April 2, 2015). The listing decision included an interim special rule under section 4(d) of the ESA, which was finalized on January 14, 2016. This 4(d) rule provides flexibility to landowners, land managers, government agencies and others as they conduct activities in areas that could be northern long-eared bat habitat. In areas of the

northern long-eared bat's range that have not yet been affected by white-nose syndrome (WNS), defined as outside the WNS zone in the final 4(d) rule, such as in Wyoming, incidental take (unintentional harm to bats incidental to otherwise lawful activities) is not prohibited. Even though the final 4(d) rule exempts incidental take, federal agencies still have an obligation to consult on may affect determinations. This obligation may be covered if the federal agency complies with measures outlined in the framework for the Service's January 5, 2016, programmatic biological opinion on the final 4(d) rule. In addition, purposeful take, other than for human safety or removal of bats from dwellings, is prohibited. Critical habitat is not proposed at this time. More information about the final 4(d) rule, programmatic biological opinion, and a current WNS zone map are available at <http://www.fws.gov/midwest/endangered/mammals/nleb/>.

This bat is a medium-sized bat, distinguished from other *Myotis* species by its characteristically large ears and long, pointed tragus (projection of skin in front of the external ear). Northern long-eared bats are found throughout eastern and central North America and occur in the extreme northeastern portions of Wyoming. Northern long-eared bats emerge at dusk to fly through the understory of forested hillsides and ridges feeding on moths, flies, leafhoppers, caddisflies, and beetles, which they catch in flight using echolocation, or by gleaning (picking) from vegetation. In the summer, male and reproductive female bats roost singly or in colonies in cracks, crevices, cavities, and under the bark of live and dead trees, while other males and non-reproductive females roost in cooler places like caves and mines. Northern long-eared bats can also be found roosting in buildings and under bridges. Maternity habitat for the northern long-eared bat is summer habitat used by juveniles and reproductive (pregnant, lactating, or post-lactating) females. Breeding occurs in late summer and fall when bats swarm at entrances of hibernacula; however, females delay fertilization until spring when they emerge from hibernation.

The primary threat to the northern long-eared bat is WNS, a disease caused by the cold-loving fungus, *Pseudogymnoascus (Geomyces) destructans*. First observed in New York in 2006, WNS has spread rapidly across the Northeast and into the Midwest and Southeast. Throughout the range of WNS, up to 99 percent of infected bats die from the disease. Although there is uncertainty about the spread of WNS, experts agree that the fungus will likely spread throughout the United States. The northern long-eared bat is also threatened by the loss and degradation of summer habitat, by collision with or barotrauma (injury to the lungs due to a change in air pressure) caused by wind turbines, and mine closures and vandalism of winter roosts and hibernacula. In areas that may provide potential habitat for the northern long-eared bat, we recommend tree-clearing and controlled burns be avoided during the maternity roosting season (approximately June 1 through July 31) unless an emergence or other survey developed in coordination with the Service determines that no northern long-eared bats are using the area. Actions to benefit the northern long-eared bat include installing bat boxes in a safe, sunny location (<http://www.fws.gov/midwest/endangered/mammals/inba/pdf/BatBoxPlanForIN.pdf>),

MIGRATORY BIRDS

Under the MBTA, the Eagle Act, and Executive Order 13186 (66 FR 3853; January 17, 2001), federal agencies have an obligation to protect all species of migratory birds, including eagles and other raptors, which may occur on lands under their jurisdiction. Of particular focus are the

species identified in the Service's Birds of Conservation Concern 2008. In accordance with the Fish and Wildlife Conservation Act (16 USC 2912 (a)(3)), this report identifies "species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing" under the ESA. This report is intended to stimulate coordinated and proactive conservation actions among federal, state, and private partners and is available at <https://www.fws.gov/migratorybirds/pdf/management/BCC2008.pdf>

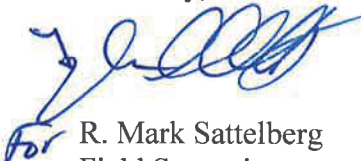
The Migratory Bird Treaty Act (MBTA), enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs, except as permitted by regulations, and does not require intent to be proven. Section 703 of the MBTA states, "Unless and except as permitted by regulations ... it shall be 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 Bald and Golden Eagle Protection Act (Eagle Act) 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.

Removal or destruction of such nests, or causing abandonment of a nest, could constitute violation of one or both of the above statutes. Removal of any active migratory bird nest or nest tree is prohibited. For golden eagles, inactive nest permits are limited to activities involving resource extraction or human health and safety. Mitigation, as determined by the local Service field office, may be required for loss of these nests. No permits will be issued for an active nest of any migratory bird species, unless removal of an active nest is necessary for reasons of human health and safety. Therefore, if nesting migratory birds are present on or near the project area, timing is a significant consideration and needs to be addressed in project planning.

Work that could lead to the take of a migratory bird or eagle, their young, eggs, or nests (e.g., if you are going to erect new roads, or power lines in the vicinity of a nest), should be coordinated with our office before any actions are taken. If nest manipulation is proposed for this project, the project proponent should contact the Service's Migratory Bird Office in Denver at 303-236-8171 to see if a permit can be issued for this project. No nest manipulation is allowed without a permit. If a permit cannot be issued, the project may need to be modified to ensure take of a migratory bird or eagle, their young, eggs or nest will not occur.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If you have any questions regarding this letter or your responsibilities under the ESA, the MBTA, and/or other authorities, please contact Kim Dickerson of my office at the letterhead address or phone (307) 772-2374, extension 230.

Sincerely,


For R. Mark Sattelberg
Field Supervisor
Wyoming Field Office

cc: FWS, Environmental Contaminants Coordinator & Deputy Division Chief, Lakewood, CO
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