



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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

JAN 29 2018

In Reply Refer To:
06E13000-2018-CPA-0054

Cinthya I. Román, Chief
Division of Fuel Cycle Safety, Safeguards and Environmental Review
Office of Nuclear Materials Safety and Safeguards
Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Ms. Román:

Thank you for your letter of January 18, 2018, received in our office on January 19, regarding the proposed license amendment to source material license SUA-1341 for Uranium One Ludeman Uranium Recovery Satellite Project (Project), Docket Number 040-08502. This Project consists of approximately 19,888 acres located primarily on privately-owned land approximately 10 miles northeast of Glenrock on State Highway 95 and State Highway in Converse County, Wyoming.

You have requested information regarding species listed under the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531 *et seq.* In response to your request, the U.S. Fish and Wildlife Service (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. When entering a project location in IPaC, be sure to define the action area, not just

the project footprint. The action area includes all areas to be affected directly or indirectly by the action and not merely the immediate area involved in the action [50 CFR 402.02].

In accordance with section 7(c) of the ESA, we have determined that the following species or their designated habitat may be present in or may be affected by actions 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**

January 2018

<u>Species/Critical Habitat</u>	<u>Scientific Name</u>	<u>Status</u>	<u>Habitat</u>
<u>Platte River Species</u> • Least Tern (Interior Population), • Pallid Sturgeon, • Piping Plover, • Western Prairie Fringed Orchid, • Whooping Crane	<i>Sterna (Sternula) antillarum</i> <i>Scaphirhynchus albus</i> <i>Charadrius melodus</i> <i>Platanthera praeclara</i> <i>Grus americana</i>	Endangered Endangered Threatened Threatened Endangered	Riverine habitat downstream of Wyoming in the Platte River system
Platte River Species Critical Habitat	Designated for whooping crane in Nebraska in riverine habitat of the Platte River system (see 50 CFR 17.95(b))		
Preble's Meadow Jumping Mouse	<i>Zapus hudsonius preblei</i>	Threatened	Lush riparian vegetation or herbaceous understories of wooded areas near water
Ute Ladies'-tresses	<i>Spiranthes diluvialis</i>	Threatened	Seasonally moist soils and wet meadows of drainages below 7,000 ft. elevation

Platte River Species: If the proposed action may lead to consumptive use of water or have the potential to affect water quality in the Platte River System, there may be impacts to threatened and endangered species inhabiting the downstream reaches of this river system. For more information on how to seek coverage under the ESA for water-related activities through the Platte River Recovery Implementation Program, please visit our web site at <http://www.fws.gov/platteriver/index.php>.

Preble's Meadow Jumping Mouse: Federal listing status under the ESA for Preble's meadow jumping mouse (*Zapus hudsonius preblei*) as a threatened species in Wyoming was reinstated on August 6, 2011 (76 FR 47490). Preble's meadow jumping mouse is a small rodent in the Zapodidae family and is one of 12 recognized subspecies of *Z. hudsonius*, the meadow jumping

mouse. This species has a body length of 3 to 4 inches, a bicolored tail 4 to 6 inches in length, large hind feet adapted for jumping, and a distinct dark stripe down the middle of its back bordered on either side by gray to orange-brown fur. Their diet consists of seeds, fruits, fungi, and insects. Preble's meadow jumping mouse is primarily nocturnal or crepuscular, but has been observed during daylight. Hibernation occurs from October to May in small burrows the mouse excavates several centimeters underground.

Preble's meadow jumping mouse exhibits a preference for lush vegetation along watercourses or herbaceous understories in wooded areas near water. The mouse occurs in low undergrowth consisting of grasses or forbs; in wet meadows and riparian corridors; or areas where tall shrubs and low trees provide adequate cover. The species uses upland habitats as far as 330 feet beyond the 100-year floodplain. In Wyoming, Preble's meadow jumping mouse has been documented in Albany, Laramie, Platte and Converse counties, and may occur in Goshen County. If a proposed project will disturb suitable habitat within any of these five counties, surveys should be conducted prior to any action. Due to the difficulty in identifying the Preble's meadow jumping mouse, surveys should be conducted by knowledgeable biologists trained in conducting these surveys.

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.

Species of Concern

Black-tailed Prairie Dog: The black-tailed prairie dog (*Cynomys ludovicianus*) was found to be not warranted for listing under the ESA (74 FR 63344; December 3, 2009). Black-tailed prairie dogs are diurnal, burrowing animals. This species of prairie dog does not hibernate. The range of the black-tailed prairie dog once spanned the short and mixed grass prairies of North America east of the Rockies from southern Canada to northern Mexico. This species still occurs over much of its historic range; although, in more widely scattered colonies. Black-tailed prairie

dogs occur within the eastern third of Wyoming. A population thought to have been intentionally introduced outside of this range also occurs in the Bighorn Basin.

Prairie dogs serve as the prey species for the black-footed ferret (*Mustela nigripes*) and several raptors, including the golden eagle (*Aquila chrysaetos*) and ferruginous hawk (*Buteo regalis*). Prairie dog colonies and burrows also provide shelter or nest sites for the mountain plover (*Charadrius montanus*) and burrowing owl (*Athene cunicularia*). Possible threats to black-tailed prairie dog populations include sylvatic plague, habitat fragmentation and control programs (e.g., poisoning). We encourage the conservation of prairie dog colonies for their value to the prairie ecosystem, the many species that rely on them, and as potential reintroduction sites for black-footed ferrets.

Migratory Birds: The MBTA, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations. 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...” On December 22, 2017, the Department of the Interior Solicitor’s Office issued an opinion that the MBTA’s prohibitions on pursuing, hunting, taking, capturing, killing, or attempting to do the same apply only to affirmative actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs.

While the binding opinion of memorandum M-37050 states that the MBTA prohibition on the taking or killing of migratory birds applies only to deliberate acts, Project activities should avoid, to the extent possible, sensitive periods and habitats to conserve healthy populations of migratory birds. Examples of protection measures include conducting Project activities outside critical breeding seasons for migratory birds, avoiding or minimizing impacts near rookeries and other breeding/nesting sites, minimizing temporary and long-term habitat losses, and mitigating the unavoidable loss of unique habitats. If land-disturbing activities occur in the spring or summer, conducting surveys can identify the presence of sensitive nesting species and habitats in and near the Project. Depending on the species of interest, surveys may extend out to 1 mile from the Project boundary for eagles, ESA-listed species, and other species sensitive to human activities.

The Eagle Act provides additional protections for bald and golden eagles and their nests. The 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, destruction, or killing. The Eagle Act prohibits the incidental take of eagles and their nests (81 FR 91494; December 16, 2016). Removal, destruction, or causing abandonment of an eagle nest without a permit is a violation of the Eagle Act. Nest permits for eagles are limited to inactive nests except for human health and safety emergencies. Mitigation, as determined by the local Service field office, may be required for loss of eagle nests.

Work that could lead to the take of eagles, their young, eggs, or nests (e.g., working near or operating machinery in the vicinity of a nest), should be coordinated with our office before any actions are taken. If an eagle nest may be impacted by the Project, the Project proponent should

contact the Service's Migratory Bird Management Office in Lakewood, Colorado at 303-236-8171 to determine if a permit can be issued. No nest manipulation is allowed without a permit. If a permit cannot be issued, the Project may need to be modified to avoid take of eagles, their young, eggs, or nest.

Wetlands/Riparian Areas: Wetlands or riparian areas may be impacted by the proposed project. 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. 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 among the most productive wildlife habitat types 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.

For our internal tracking purposes, the Service would appreciate notification of any decision made on this Project (such as issuance of a permit or signing of a Record of Decision or Decision Memo). Notification can be sent in writing to the letterhead address or by electronic mail to WyomingES@fws.gov.

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

Sincerely,



For Tyler A. Abbott
Field Supervisor
Wyoming Field Office

cc: WGFD, Statewide Nongame Bird and Mammal Program Supervisor, Lander, WY
(Z. Walker) (zack.walker@wyo.gov)
WGFD, Statewide Habitat Protection Program, Cheyenne, WY (wgfd.hpp@wyo.gov)