

APPENDIX A
COMMENT LETTERS AND RESPONSES



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

BUREAU OF LAND
MANAGEMENT
CASPER FIELD OFFICE
01 FEB -6 AM 11:11

ES-61411
pd/W.02/wy4336.pd

January 30, 2001

Memorandum

To: Nancy Doelger, Project Coordinator, Bureau of Land Management, Casper Field Office, Casper Wyoming

From: Mike Long, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming *Mike Long*

Subject: Environmental Assessment for the Belle Ayr 2000 Federal Coal Lease Application (WYW 151133)

Thank you for the Environmental Assessment (EA) for the Belle Ayr 2000 Federal Coal Lease Application (project): The EA addresses a coal lease request from RAG Wyoming Land Company, Inc. for 243.61 acres and 29 million tons of mineable coal in Campbell County, Wyoming.

The Endangered Species Act of 1973, as amended (Act), requires Federal agencies to ensure their activities will not jeopardize a listed or proposed species, or critical habitat, for actions under their discretion. Leasing this coal tract is a discretionary Federal action, and therefore, the Bureau of Land Management (BLM) needs to consult with the Fish and Wildlife Service (Service) if the proposed action (issuance of a mining lease), will negatively affect a listed species or jeopardize a proposed species. We understand the mine permitting process will provide opportunities to assess impacts to threatened and endangered species, if any. However, delaying resolution of threatened and endangered species concerns until the mine permitting stage does not satisfy consultation requirements under section 7 the Act. Additionally, the stipulation regarding threatened and endangered species (Appendix C) states that potential impacts to species protected by the Act which cannot be resolved through coordination with the Service could be restricted or constrained by the State regulatory authority (Wyoming Department of Environmental Quality (WDEQ)). If there will be adverse affects to species protected by the Act as a result of this action, or future actions which could be facilitated by the leasing action, the BLM needs to request a formal section 7 consultation for this project, and implement the results of that consultation in order to be in compliance with the Act. If the proposed action or future actions facilitated by the proposed action may affect, but is not likely to adversely affect listed species, then informal consultation with the Service will be necessary. If the BLM is transferring consultation responsibility to

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Nancy Doelger

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WDEQ, then the BLM should advise WDEQ of their responsibilities under the Act, and the need to initiate section 7 consultation. The BLM should also provide our office with a contact person at WDEQ. However, BLM remains ultimately responsible for ensuring compliance with the Act.

If you have any questions, please contact Pat Deibert of my staff at the letterhead address or phone (307)-772-2374, extension 26.

cc: Statewide Habitat Protection Office, WGFD, Cheyenne, WY
Margot Zallen, FWS Solicitors Office, Denver, CO
Grady Towns, FWS NEPA Coordinator, Denver, CO

**Response to Comment Letter 1:
U.S. Fish and Wildlife Service**

BLM has concluded that leasing the Belle Ayr 2000 LBA tract is not likely to adversely affect any of the threatened, endangered, or candidate species that U.S. Fish and Wildlife Service advised may be present in the area of the Belle Ayr 2000 LBA Tract. This evaluation is summarized in Appendix C of the Belle Ayr 2000 Draft Environmental Assessment. The stipulation referenced in Appendix C is intended as a reminder to the lessee that the process of evaluating potential impacts to T&E species continues after a lease is issued. Specifically, it is intended as a notification to the lessee that continuing evaluation of potential impacts to threatened and endangered species will be part the process of obtaining and maintaining a permit to mine, and that mining operations can be restricted by the permitting agency if potential impacts to threatened, endangered or candidate species cannot be resolved.

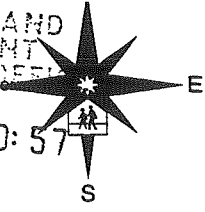


JIM GERINGER
GOVERNOR

State of Wyoming
Office of Federal Land Policy

Art Reese, Director

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MANAGEMENT
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February 5, 2001

Nancy Doelger
BLM, Casper Field Office
2987 Prospector Drive
Casper, WY 82604

CORRECTED COPY

Re: Environmental Assessment for the Belle Ayr 2000 Lease Application , 2000-124

Dear Nancy:

On behalf of the State of Wyoming, this office has reviewed the referenced environmental assessment. We also provided the document to all affected state agencies for their review, in accordance with State Clearinghouse procedures. Enclosed you will find a letter from the Wyoming Game and Fish Department which resulted from their review. State agency comments are specific to their respective agency missions. While the State defers to their technical expertise in developing the State's position, the responsibility to ultimately articulate the official state policies and positions lies with the Governor or the Office of Federal Land Policy. This office submitted a letter to you dated January 29, 2001 which contained an error. Please replace that letter with this one.

The State supports the proposed action. Given that three sides of this tract are currently being mined, we would expect new environmental impact to the area would be limited. As well, if this tract is not leased it will result in a loss of revenue for the federal government and the State of Wyoming on twenty-nine (29) million tons of recoverable coal. In order to fully realize this resource we encourage the BLM to move swiftly on this LBA.

Please continue to provide this office with either a hard copy or electronic copy (submit to schild@state.wy.us) of continued information for review and distribution to interested agencies. Thank you for the opportunity to comment.

Sincerely,

Art Reese
Director

Enclosure

cc: Campbell County Commissioners
Wy. Game and Fish Department
Wy. State Geological Survey

WYOMING
GAME AND FISH DEPARTMENT



"Conserving Wildlife — Serving People" 01 FEB -6 AM 10: 57

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January 22, 2001

WER 153.01
Bureau of Land Management
Casper Field Office
Draft Environmental Assessment
Belle Ayr 2000 Coal Lease Application
(WYW151133)

Art Reese, Director
Office of Federal Land Policy
Herschler Building, 1W
122 W. 25th Street
Cheyenne, WY 82002

Dear Mr. Reese:

These comments regarding the draft environmental assessment for the Belle Ayr Coal Lease Application (WYW151133) have been approved by the Director and are specific to this agency's statutory mission within State government which is "Conserving Wildlife, Serving People". In that regard these comments are meant to, in association with all other agency comments, assist in defining the Official State Position. These comments defer to and are subordinate to the Official State Position.

Regarding terrestrial wildlife, the environmental assessment appears to have adequately addressed wildlife issues and we have no additional comments or concerns.

Regarding aquatics, the document indicates at pages 3-20 (fishes) that because Draw No. 2 is ephemeral, no aquatic habitat exists. This is incorrect. Ephemeral streams can be very important habitats on a seasonal basis for amphibians and fishes. We suggest this section be changed to reflect this and any data on amphibians included.

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

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CASPER FIELD OFFICE

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Thank you for the opportunity to comment.

Sincerely,



BILL WICHERS
DEPUTY DIRECTOR

BW:TC:as

These comments are reflective of a specific agency mission only. These comments defer to and are subordinate to the Official State Position.

**Response to Comment Letters 2 & 3:
Wyoming Office of Federal Land Policy &
Wyoming Game and Fish Department**

Section 3.10.7 has been revised in the final EA to include information about fish and amphibians as follows:

Section 3.10.7 FISHES AND AMPHIBIANS

“Draw No. 2, an ephemeral drainage, is the only potential body of water located on the Belle Ayr 2000 Tract. The drainage is not known to support persistent pools following rain events, so fish are highly unlikely to occur there. No incidental observations of fish were ever recorded during surveys for other fauna in the vicinity of Draw No. 2. Any aquatic habitat present in Draw No. 2 is limited in quantity, and is similar to habitat available elsewhere on the permit area and surrounding perimeter.

Three amphibians have been recorded on the Belle Ayr permit area, the boreal chorus frog (*Pseudacris triseriata maculata*), Northern leopard frog (*Rana pipiens*), and the Tiger salamander (*Ambystoma tigrinum*). The boreal chorus frog is heard throughout the permit area and surrounding perimeter throughout early spring and summer. Occurrences of all three species at the Belle Ayr Mine have been limited to larger, more persistent water bodies such as native and reclaimed reaches of Caballo Creek. Two other amphibian species common to Campbell County include the Plains spadefoot toad (*Scaphiopus bombifrons*) and the Great Plains toad (*Bufo cognatus*). Neither of these two species has been documented at Belle Ayr Mine.”