

APPENDIX 3

CONCURRENCE LETTER FROM THE
U.S. FISH AND WILDLIFE SERVICE



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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

BUREAU OF LAND
MANAGEMENT
CASPER FIELD OFFICE

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In Reply Refer To:
ES-61411/W.02/WY0710330

Memorandum

To: Mike Karbs, Assistant Field Office Manager, Solid Minerals. Bureau of Land Management, Casper Field Office, Casper, Wyoming
Attn: Nancy Doelger

From: Brian T. Kelly, Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming
Patricia DeLent for

Subject: Eagle Butte West Coal Lease by Application, Final Biological Assessment

Thank you for your letter, dated June 26, 2007, and the final biological assessment (BA) for the proposed Eagle Butte West Coal Lease by Application (LBA). The Bureau of Land Management (BLM) is proposing to offer the Eagle Butte West tract, located west and immediately adjacent to the Eagle Butte Mine, for lease. The Eagle Butte West tract is located in Sections 19, 20, 29 and 30 in T 51N/R72W, Campbell County, Wyoming. The coal estate underlying the Eagle Butte West tract is owned by the federal government and administered by the BLM. The surface estate is privately owned by Foundation West Coal, LLC. The tract encompasses approximately 1400 acres of surface land and contains approximately 228 million tons of coal.

The federally listed species addressed in the BA for the Eagle Butte West Coal LBA are the bald eagle (*Haliaeetus leucocephalus*), Ute ladies'-tresses (*Spiranthes diluvialis*) and the black-footed ferret (*Mustela nigripes*). As stated in the BA, the BLM has determined that the proposed Eagle Butte West Coal LBA will have 'no effect' on the black-footed ferret. The BLM has also determined that the Eagle Butte West LBA 'may affect, but is not likely to adversely affect' the bald eagle and Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the proposed Eagle Butte West Coal LBA on bald eagle and Ute ladies'-tresses in accordance with section 7(a)(2) of the Endangered Species Act (Act) of 1973, as amended (50 CFR §402.13), and this letter transmits the U.S. Fish and Wildlife Service's (Service) concurrence.

Bald Eagle: As documented in the BA there are no bald eagle nests or communal winter roost sites within 1 mile of the Eagle Butte West tract. Bald eagles have been infrequently observed, foraging and perching in windbreaks in Sections 20 and 29, T 51N/R 72W and near a water impoundment in Section 32, T 51N/ R 72W during winter. There are, however, no concentrated sources of carrion or prey for eagles in the area. Therefore impacts to eagles due to leasing of coal on the Eagle Butte tract are anticipated to be limited to winter foraging and perching

opportunities. Eagles may be temporarily displaced by mining of the tract lease, but the tract does not provide consistent, reliable or concentrated food sources, and foraging habitat lost during mining would be expected to be replaced by reclamation on mined-out areas.

Based on information in the BA that bald eagle foraging opportunities will not be significantly impacted, and that no bald eagle nests or winter communal roosts occur within one mile of the lease tract, the Service concurs with the BLM that leasing of the Eagle Butte West tract 'may affect, but is not likely to adversely affect' the bald eagle.

Ute ladies'-tresses: As documented in the BA for the Eagle Butte West Coal LBA, no Ute ladies'-tresses orchids were found during surveys conducted in the coal lease tract in late August and September of 2004 and in August 2005. As stated in the BA, surveys were conducted in all areas of suitable habitat during the period of year when the orchid is expected to be in flower. Additionally, although habitat was considered suitable for survey efforts, the quality of potential Ute ladies'-tresses habitat in the area may be sub-optimal due to heavy and moderately saline soils and the heavy colonization of aggressive rhizomatous graminoids. Based on the information that the Ute ladies'-tresses orchid is unlikely to occur in the area, the Service concurs with the BLM that leasing of the Eagle Butte West tract 'may affect, but is not likely to adversely affect' Ute ladies'-tresses.

This concludes informal consultation pursuant to the regulations implementing the Act. This project should be re-analyzed if new information reveals effects of the action that may affect listed or proposed species or designated or proposed critical habitat in a manner or to an extent not considered in this consultation; if the action is subsequently modified in a manner that causes an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this consultation; and/or, if a new species is listed or critical habitat is designated that may be affected by this project.

We acknowledge that the BLM has determined that the Eagle Butte West LBA will have "no effect" on the black-footed ferret. When the BLM makes a "no effect" determination, concurrence from the Service is not required, although we appreciate receiving a copy of the information you used to make that determination for our records.

We thank the BLM for continued efforts to ensure the conservation of federally listed species. If you have any questions or comments regarding this letter, please contact Trish Sweanor at the letterhead address or phone (307) 772-2374, extension 239.

cc: BLM, Buffalo FO, Wildlife Biologist, Buffalo, WY (A. Kosic)
BLM, Buffalo FO, Wildlife Biologist, Buffalo, WY (L. Gerard)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (V. Stelter)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)