

APPENDIX 3

U.S. FISH AND WILDLIFE SERVICE
CONCURRENCE LETTER



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



DEC 15 2010

In Reply Refer To:
ES-61411/WY110018

Memorandum

To: District Manager, Solid Minerals, Bureau of Land Management, Wyoming High Plains District, Casper, Wyoming

From: Field Supervisor, U.S. Fish and Wildlife Service, Wyoming Field Office, Cheyenne, Wyoming *[Signature]*

Subject: Concurrence for the North Hilight, South Hilight, and West Hilight Coal Lease-By-Application Tracts

Thank you for your letter and attached biological assessment for the North Hilight, South Hilight and West Hilight Coal Lease-By-Application (LBA) Tracts, dated October 13, 2010, received in our office October 14. Under the Bureau of Land Management's (Bureau) preferred alternative (Alternative 2) in the Wright Area Coal Lease Applications Final Environmental Impact Statement for the North Hilight, South Hilight, and West Hilight Field LBA Tracts (FEIS), the Bureau will hold a sealed-bid, competitive coal lease sale for the lands included in the above LBA tracts, and issue the leases to the successful bidder. The legal descriptions for the Bureau's preferred configuration (Alternative 2), for the North Hilight, South Hilight, and West Hilight LBA Tracts can be found in Appendix G, pages G-9, G-13, G-17 of the FEIS.

Your letter requested the U.S. Fish and Wildlife Service (Service) consider Appendix G of the FEIS and errata to serve as the biological assessment for the above three Federal actions. You have also requested the Service concur with the Bureau's determinations contained in your October 13, 2010, letter pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended, 50 CFR § 402.13.

We were unable to complete this consultation until additional information was provided, which was received on November 22 and 25, 2010. That information consisted of the following:

1. An errata to the Wright Area Coal Lease Applications FEIS posted at <http://www.blm.gov/wy/st/en/info/NEPA/HighPlains/Wright-Coal.html>.

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2. Threatened & Endangered Plant Species Survey Report for Thunder Basin Coal Company North Highlight LBA Tract, South Highlight LBA Tract, West Highlight LBA Tract, prepared by Scott Benson of Habitat Management Incorporated, November 8, 2010.

Based on the information provided in (1) the biological assessment (Appendix G of the Wright Area Coal Lease Applications FEIS and errata), (2) the conservation measures identified in Appendix D of the FEIS, and (3) the survey methods and results reported in the above referenced Threatened & Endangered Plant Species Survey Report, the Service concurs with the Bureau's determination that leasing the North Hilight, South Hilight, and West Hilight LBA tracts, may affect, but is not likely to adversely affect the Ute ladies'-tresses orchid (*Spiranthes diluvialis*). Appropriately timed surveys of all suitable habitat within the above LBA tracts conducted in 2008, 2009, and 2010 found no evidence of Ute ladies'-tresses orchids.

The Bureau has determined leasing the North Hilight, South Hilight, and West Hilight LBA tracts is not likely to jeopardize the continued existence of the mountain plover (*Charadrius montanus*). We encourage project planners to develop and implement protective measures should mountain plovers occur within project areas. Measures to protect the mountain plover from further decline may include: (1) avoidance of suitable habitat during the plover nesting season (April 10 through July 10), (2) prohibition of ground disturbing activities in prairie dog towns, and (3) prohibition of any permanent above ground structures that may provide perches for avian predators or deter plovers from using preferred habitat. Suitable habitat for nesting mountain plovers includes grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns. We strongly encourage you to develop protective measures with an assurance of implementation should mountain plovers be found within the project areas.

The Bureau has determined that leasing the North Hilight, South Hilight, and West Hilight LBA tracts will have no effect to the black-footed ferret (*Mustela nigripes*) or blowout penstemon (*Penstemon haydenii*). When the Bureau makes a no effect determination, concurrence from the Service is not required although we do appreciate receiving the information used to make that determination.

This concludes informal consultation and coordination 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 species or designated or proposed critical habitat (1) in a manner or to an extent not considered in this letter, (2) if the action is subsequently modified in a manner that causes an effect to a listed species or designated or proposed critical habitat that was not considered in this letter, and/or (3) if a new species is listed or critical habitat is designated that may be affected by this project.

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 FW6_Federal_Activities_Cheyenne@fws.gov.

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.

cc: BLM, Field Manager, Buffalo Field Office, Buffalo, WY, (D. Spencer)
BLM-State Office, T&E Coordinator, Cheyenne, WY (T. Abbott)
FWS, Federal Activities Specialist, Denver, CO (D. Carlson)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (M. Flanderka)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)