

APPENDIX E

**BIOLOGICAL ASSESSMENT
FOR THE BELLE AYR NORTH LBA TRACT,
SOUTH GILLETTE AREA EIS**

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E-1.0 INTRODUCTION

Between 2004 and 2006, operators of four coal mines in Campbell County, Wyoming applied for four tracts of federal coal as maintenance leases under the Leasing on Application regulations at 43 CFD 3425. The environmental impacts of leasing these four Lease by Application (LBA) tracts are being evaluated in one environmental impact statement (EIS), the South Gillette Area Coal (SGAC) EIS. The four tracts, which are shown in Figure E-1, and applicant mines are:

- Belle Ayr North LBA Tract adjacent to and north of the Belle Ayr Mine;
- West Coal Creek LBA Tract adjacent to and west of the Coal Creek Mine;
- Caballo West LBA Tract adjacent to and southwest of the Caballo Mine; and
- Maysdorf II LBA Tract adjacent to and west of the Cordero Rojo Complex.

The purpose of this Biological Assessment is to provide information about the potential effects that leasing one of the tracts, the Belle Ayr North LBA Tract, would have on federally listed threatened or endangered (T&E) species. T&E species are managed under the authority of the Endangered Species Act of 1973 (PL 93-205, as amended). The Endangered Species Act requires Federal agencies to ensure that all actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any federally listed species or result in the destruction or adverse modification of their critical habitat. BLM does not authorize mining by issuing a lease for federal coal, but the impacts of mining the coal are considered at the leasing stage because it is a logical consequence of issuing a lease.

This Biological Assessment was prepared to disclose the possible effects to T&E species (plant and animal) that are known to be present or that may be present within the area influenced by the Proposed Action and the alternative to the Proposed Action being evaluated by the BLM. It was prepared in accordance with Section 7 of the Endangered Species Act.

Biological Assessment objectives are:

1. To comply with the requirements of the Endangered Species Act that actions of federal agencies not jeopardize or adversely modify critical habitat of federally listed species.
2. To provide a process and standard by which to ensure that threatened or endangered species receive full consideration in the decision making process.

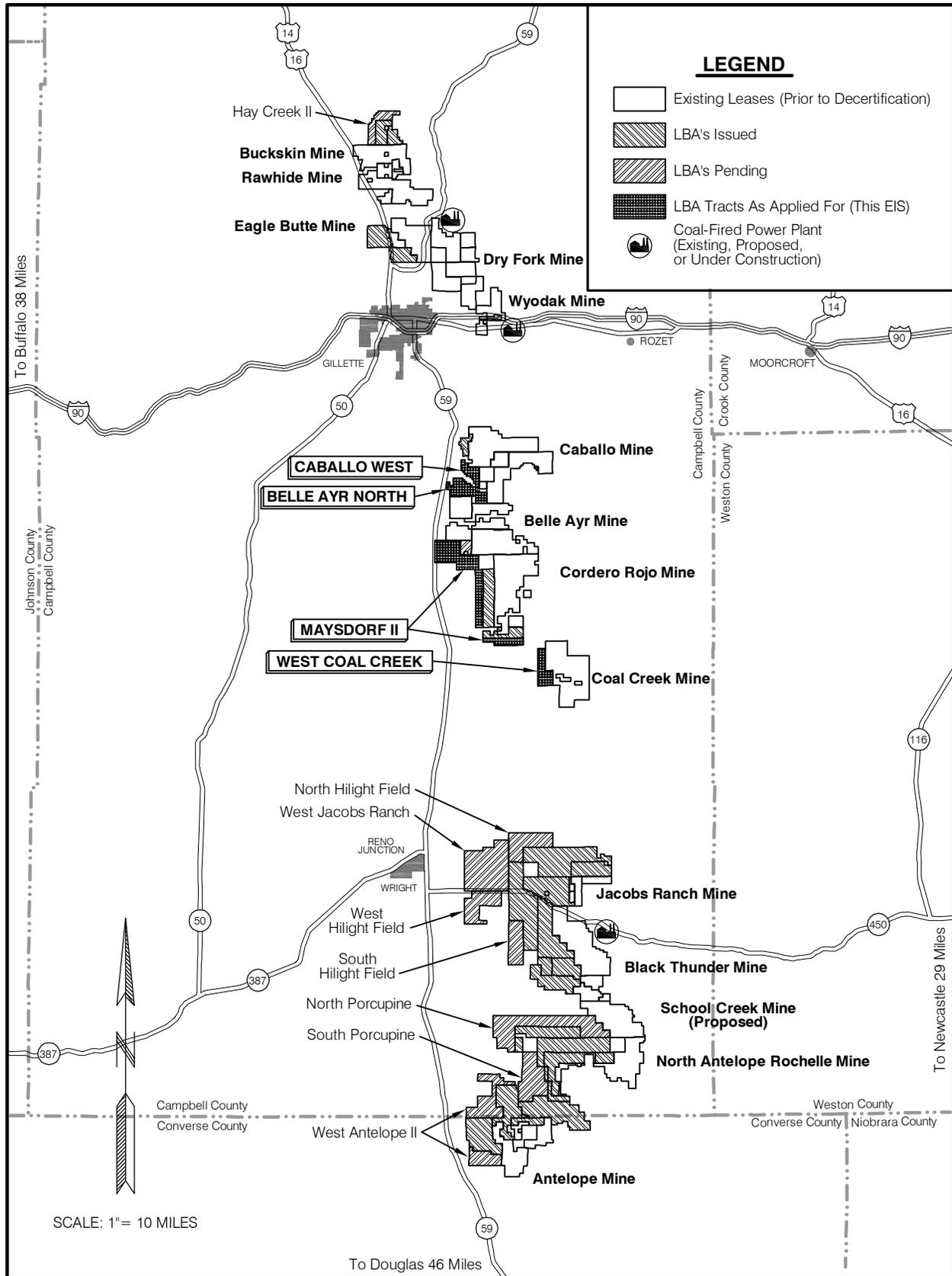


Figure E-1. General Location Map with Federal Coal Leases and LBA Tracts.

E-2.0 DESCRIPTION OF THE PROPOSED ACTION AND ALTERNATIVES

E-2.1 The Proposed Action

On July 6, 2004, RAG Coal West, Inc. filed an application with the BLM to lease federal coal reserves in a tract located west of and immediately adjacent to the Belle Ayr Mine (Figure E-1). The tract was assigned case file number WYW161248. In August 2004, RAG Coal West, Inc. finalized the sale of the Belle Ayr Mine to Foundation Coal West, Inc. (FCW), a directly held subsidiary of Foundation Coal Corporation. Under the Proposed Action for the Belle Ayr North LBA Tract, the tract as applied for by FCW would be offered for lease at a sealed-bid, competitive lease sale. The boundaries of the tract would be consistent with the tract configuration proposed in the Belle Ayr North LBA Tract lease application (Figure E-2). The Proposed Action assumes that FCW will be the successful bidder on the Belle Ayr North LBA Tract if it is offered for sale.

The legal description of the proposed Belle Ayr North LBA Tract coal lease lands as applied for by FCW under the Proposed Action is as follows:

T. 48 N., R. 71 W., 6th PM, Campbell County, Wyoming

Section 18: Lots 17, 18, 19(W $\frac{1}{2}$, SE $\frac{1}{4}$);	113.48 acres
Section 19: Lots 5 through 19;	606.93 acres
Section 20: Lots 3 (SW $\frac{1}{4}$), 4 (W $\frac{1}{2}$, SE $\frac{1}{4}$), 5, 6, 7 (S $\frac{1}{2}$), 9 (S $\frac{1}{2}$), 10 through 16;	450.43 acres
Section 21: Lots 13, 14;	81.52 acres
Section 28: Lots 3 through 6;	161.98 acres
Section 29: Lots 1, 6;	81.63 acres

T. 48 N., R.72 W., 6th PM, Campbell County, Wyoming

Section 24: Lots 1, 8.	<u>82.77 acres</u>
Total:	1,578.74 acres

The coal estate in the tract described above is federal and the surface estate is owned by FCW. Surface ownership is shown in Figure E-3.

The tract as applied for includes approximately 1,578.74 mineable acres. It is assumed that an area larger than the tract would have to be disturbed in order to recover all of the coal in the tract. The disturbances outside of the tract

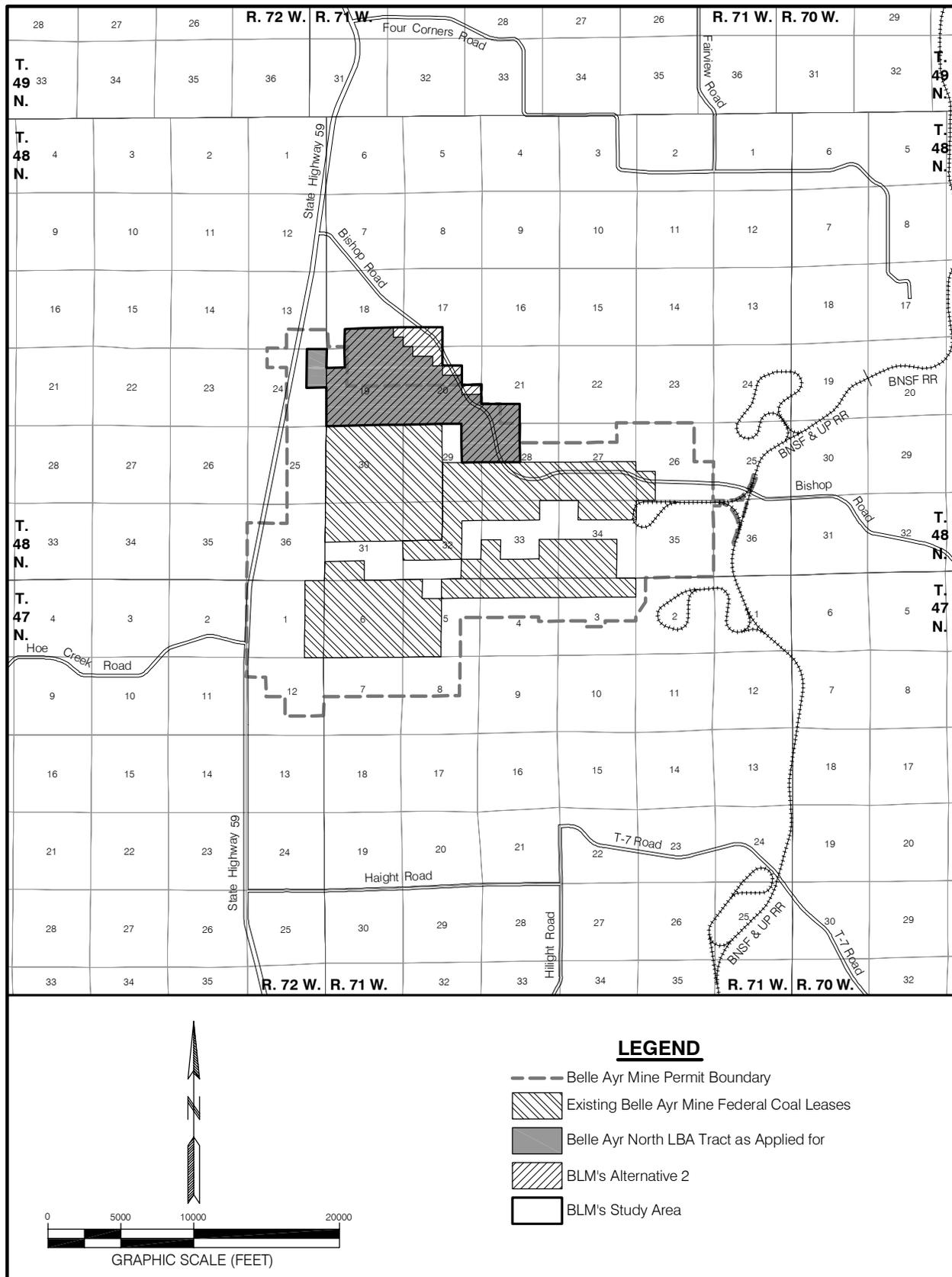


Figure E-2. Belle Ayr North LBA Tract Alternatives.

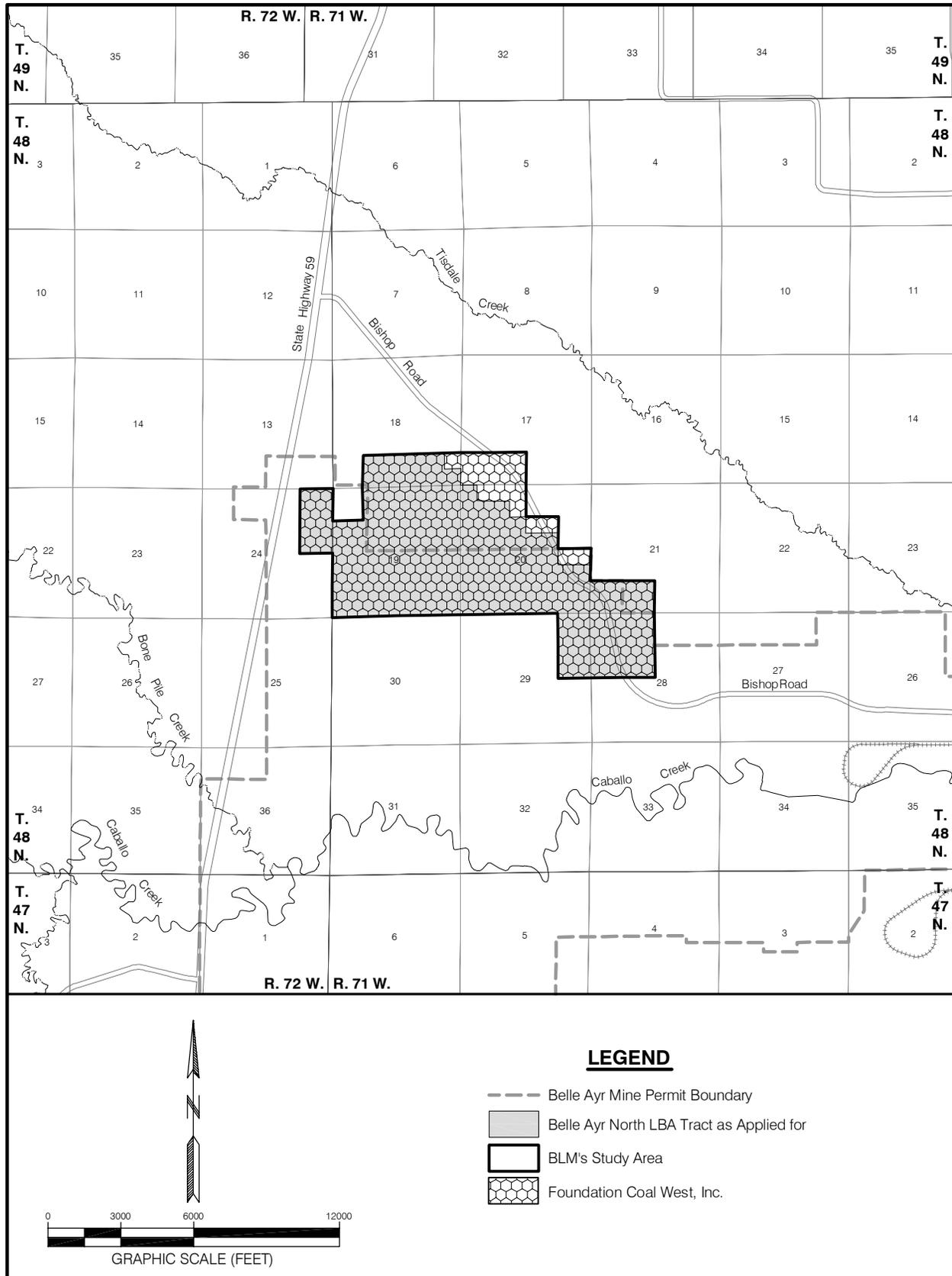


Figure E-3. Surface Ownership Within the Belle Ayr North LBA Tract Alternatives.

would be due to activities like overstripping, matching undisturbed topography, and construction of flood control and sediment control structures.

Under the Proposed Action for the Belle Ayr North LBA Tract, if a decision is made to hold a competitive lease sale and if there is a successful bidder at that sale, a lease would be issued for the tract of federal coal as applied for. Not all of the coal in the tract is suitable for mining due to the presence of the Bishop Road. The tract offered for lease would be subject to standard and special lease stipulations developed for the Wyoming Powder River Basin (PRB). The stipulations that would be attached to a lease for the Belle Ayr North LBA Tract are listed in Appendix D of the SGAC EIS document. The following stipulation relating to T&E species is one of the special stipulations developed for the Wyoming PRB:

THREATENED, ENDANGERED, CANDIDATE, or OTHER SPECIAL STATUS PLANT and ANIMAL SPECIES - *The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened or endangered under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or that have other special status. The Authorized Officer may recommend modifications to exploration and development proposals to further conservation and management objectives or to avoid activity that will contribute to a need to list such species or their habitat or to comply with any biological opinion issued by the Fish and Wildlife Service for the Proposed Action. The Authorized Officer will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the Endangered Species Act. The Authorized Officer may require modifications to, or disapprove a proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species, or result in the destruction or adverse modification of designated or proposed critical habitat.*

The lessee shall comply with instructions from the Authorized Officer of the surface managing agency (BLM, if the surface is private) for ground disturbing activities associated with coal exploration on federal coal leases prior to approval of a mining and reclamation permit or outside an approved mining and reclamation permit area. The lessee shall comply with instructions from the Authorized Officer of the Office of Surface Mining Reclamation and Enforcement, or his designated representative, for all ground disturbing activities taking place within an approved mining and reclamation permit area or associated with such a permit.

Some of the coal in Belle Ayr North LBA Tract under the Proposed Action is not currently considered to be mineable due to the presence of the Bishop Road (County Road 12). A portion the Bishop Road overlies some of the coal included in the tract. As discussed in Chapter 1, Section 1.1, the Surface Mining Control and Reclamation Act prohibits mining within 100 ft on either side of the right-of-way of any public road (43 CFR 3461). There would also be a quantity of coal east of the Bishop Road that would be isolated from the

mining operations if the coal under the road was not mined. The coal underlying the portion of the Bishop Road, its right-of-way, and the 100 ft buffer zone within the Belle Ayr North LBA Tract could be mined if the Campbell County Board of Commissioners, the authorized agency, determines that the road can be moved [30 CFR 761.11(d)]. FCW is evaluating the feasibility of relocating the road at this time. FCW estimates that the tract as proposed includes approximately 208.1 million tons of in-place coal and 168.2 million tons of mineable coal. Using FCW's projected recovery factor of 94 percent, the tract would contain about 158.1 million tons of recoverable coal.

Under the Proposed Action, it is assumed that the LBA tract would be developed as a maintenance lease to extend the life of the adjacent existing Belle Ayr Mine. As a result, under the Proposed Action, the coal included in the tract would be mined by existing employees using existing facilities and roads.

E-2.2 Alternatives to the Proposed Action

E-2.2.1 Alternative 1

Under Alternative 1, the No Action Alternative, the application to lease the coal included in the Belle Ayr North LBA Tract would be rejected, the tract would not be offered for competitive sale, and the coal included in the tract would not be mined. This would not affect permitted mining activities and employment on the existing leases at Belle Ayr Mine and would not preclude an application to lease the federal coal included in the Belle Ayr North LBA Tract in the future. No additional surface of the Belle Ayr North LBA Tract would be disturbed due to overstripping to allow coal to be removed from the adjacent existing leases.

E-2.2.2 Alternative 2

Under Alternative 2 for the Belle Ayr North LBA Tract, BLM would reconfigure the tract, hold a competitive coal sale for the lands included in the reconfigured tract, and issue a lease to the successful bidder. In evaluating the Belle Ayr North coal lease application, BLM identified a study area, which includes unleased federal coal adjacent to the northern edge of the tract as applied for (Figure E-2). BLM is evaluating the potential that some or all of these lands could be added to the tract to provide for more efficient recovery of the federal coal, increase competitive interest in the tract, and/or reduce the potential that some of the potentially mineable federal coal in this area would be bypassed in the future if it is not included in the Belle Ayr North LBA Tract. The modified tract would be subject to standard and special lease stipulations developed for the PRB and this tract if it is offered for sale, as discussed above. Alternative 2 for the Belle Ayr North LBA Tract assumes that FCW would be the successful bidder on the tract if a lease sale is held and that the tract would be developed as a maintenance lease to extend the life of the adjacent Belle Ayr Mine. Other assumptions are the same as for the Proposed Action. The lands that BLM is considering adding to the tract are:

Appendix E

T. 48 N., R. 71 W., 6th PM, Campbell County, Wyoming

Section 17: Lots 13, 14;	82.53 acres
Section 18: Lots 19 (NE ¹ / ₄);	10.34 acres
Section 20: Lots 3 (E ¹ / ₂ , NW ¹ / ₄), 4 (NE ¹ / ₄), 7 (N ¹ / ₂), and 9 (N ¹ / ₂);	<u>82.19 acres</u>
Total Added:	175.06 acres

The area BLM is evaluating removes the following lands from the tract as applied for:

T. 48 N., R.72 W., 6th PM, Campbell County, Wyoming

Section 24: Lots 1, 8.	<u>-82.77 acres</u>
Total (Net Change):	92.29 acres

The legal description of BLM's reconfiguration of the Belle Ayr North LBA Tract under Alternative 2 is as follows:

T. 48 N., R. 71 W., 6th PM, Campbell County, Wyoming

Section 17: Lots 13, 14;	82.53 acres
Section 18: Lots 17, 18, 19;	123.82 acres
Section 19: Lots 5 through 19;	606.93 acres
Section 20: Lots 3 through 7, 9through 16;	532.62 acres
Section 21: Lots 13, 14;	81.52 acres
Section 28: Lots 3 through 6;	161.98 acres
Section 29: Lots 1, 6.	<u>81.63 acres</u>
Total:	1,671.03 acres

Not all of the coal included in the Belle Ayr North LBA Tract is considered to be mineable at this time. A portion the Bishop Road (County Road 12) overlies some of the coal included in the tract. As discussed in Chapter 1, Section 1.1, the Surface Mining Control and Reclamation Act prohibits mining within 100 ft on either side of the right-of-way of any public road (43 CFR 3461). There would also be a quantity of coal east of the Bishop Road that would be isolated from the mining operations if the coal under the road was not mined. The coal

underlying the portion of the Bishop Road and its right-of-way, and the 100 ft buffer zone within the Belle Ayr North LBA Tract could be mined if the Campbell County Board of Commissioners, the authorized agency, determines that the road can be moved [30 CFR 761.11(d)]. FCW is evaluating the feasibility of relocating the road at this time.

FCW estimates that the reconfigured tract includes approximately 221.1 million tons of in-place coal and 162.6 million tons of mineable coal. Using FCW's projected recovery factor of 94 percent, the reconfigured tract would contain about 152.8 million tons of recoverable coal.

E-3.0 CONSULTATION TO DATE

The locations of the existing Belle Ayr Mine coal leases, the existing approved mine permit area, and the Belle Ayr North LBA Tract are shown in Figure E-2.

The Belle Ayr Mine and Belle Ayr North LBA Tract are included in the area determined to be "acceptable for further consideration for leasing" as part of the coal screening process. The coal screening process is a four part process that includes application of the coal unsuitability criteria, which are defined in 43 CFR 3461.5. BLM has applied these coal screens to federal coal lands in Campbell County several times, starting in the early 1980s. Most recently, in 1993, BLM began the process of reapplying these screens to federal coal lands in Campbell, Converse, and Sheridan Counties. The results of this analysis were included as Appendix D of the 2001 *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (BLM 2001), which can be viewed on the Wyoming BLM website at <http://www.wy.blm.gov> in the NEPA documents section. Consultation with the U.S. Fish and Wildlife Service (USFWS) occurred in conjunction with the unsuitability findings under Criterion 9 (Critical Habitat for Threatened or Endangered Plant and Animal Species), Criterion 11 (Bald or Golden Eagle Nests), Criterion 12 (Bald and Golden Eagle Roost and Concentration Areas), Criterion 13 (Falcon Nesting Site(s) and Buffer Zone(s)), and Criterion 14 (Habitat for Migratory Bird Species).

Appendix B of the SGAC EIS document summarizes the unsuitability criteria, describes the general findings for the screening analyses discussed above, and presents a validation of these findings for the Belle Ayr North LBA Tract based on the current information.

Consultation with USFWS has previously been completed for the area included within the Belle Ayr Mine's existing approved mining permit area, shown in Figure E-2, as part of the mining and reclamation plan approval process. This process began when the mine was initially permitted in 1972.

A letter dated May 15, 2003, from Jodi Bush, USFWS, Cheyenne, Wyoming, to Laurel Vicklund, FCW, Gillette, Wyoming, documents approval of the current

updated Raptor and Migratory Birds of High Federal Interest (MBHFI) Monitoring and Mitigation Plan for the Belle Ayr Mine (USFWS 2003a).

USFWS provided BLM a listing of the T&E species that may be present in the Belle Ayr North coal lease project area in a memorandum letter from Brian T. Kelly, USFWS, Wyoming Field Office, Cheyenne, Wyoming, to Chris Hanson, BLM, Buffalo Field Office, Buffalo, Wyoming dated August 8, 2007 (USFWS 2007). The following list of species that was provided by USFWS represents the federally listed T&E species that may be present in Campbell County, Wyoming:

Black-footed ferret (*Mustela nigripes*): Endangered

Ute ladies'-tresses (*Spiranthes diluvialis*): Threatened

The August 8, 2007 memorandum provided recommendations for protective measures for T&E species in accordance with the Endangered Species Act. Protective measures for migratory birds in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act and recommendations for the protection of wetlands (under Executive Order 11990 and Section 404 of the Clean Water Act) and for other fish and wildlife resources (under the Fish and Wildlife Coordination Act and the Fish and Wildlife Act of 1956) were also included. The memorandum identified the greater sage-grouse as a species of specific interest and the importance of identifying grouse habitats within the lease area and appropriate mitigation measures to minimize potential impacts to this species. The memorandum also stated that the USFWS would work with the BLM to ensure that the species-specific protective measures and programs for the conservation and recovery of listed species as required by under Section 7 of the Endangered Species Act are satisfied and carried out.

The Wyoming Game and Fish Department (WGFD) provided BLM with scoping comments for the four tracts included in the SGAC EIS in a letter from John Emmerich, Deputy Director, WGFD, Cheyenne, Wyoming, to Teresa Johnson, BLM, Casper Field Office, Casper, Wyoming, dated April 10, 2007 (WGFD 2007). WGFD recommended consideration be given to possible impacts to big game, sage grouse, raptors, and nongame species and their habitat, and aquatic resources within the South Gillette Area Coal project area.

E-4.0 SPECIES HABITAT AND OCCURRENCE AND EFFECTS OF THE PROPOSED PROJECT

The Belle Ayr Mine began producing coal in 1972. Wildlife monitoring has been conducted annually for the mine since 1984. This wildlife monitoring was designed to meet the Wyoming Department of Environmental Quality/Land Quality Division (WDEQ/LQD), Wyoming Game and Fish Department (WGFD), and federal requirements for annual monitoring and reporting of wildlife activity on coal mining areas. Detailed procedures and site-specific requirements have been carried out as approved by WGFD and USFWS. The

monitoring program was conducted in accordance with Appendix B of WDEQ/LQD Coal Rules and Regulations. Because the areas covered in the wildlife surveys included the mine's permit area and a large perimeter around the permit boundary, the entire Belle Ayr North LBA Tract has been included in baseline inventories and annual wildlife surveys conducted for the Belle Ayr Mine since wildlife studies began.

The approved Belle Ayr Mine Permit 214 Term T6 (FCW 2005) includes monitoring and mitigation measures for the Belle Ayr Mine that are required by the Surface Mining Control and Reclamation Act and Wyoming State Law. If the Belle Ayr North LBA Tract is acquired by FCW, these monitoring and mitigation measures would be extended to cover operations on the LBA tract when the Belle Ayr Mine's mining permit is amended to include the tract. This amended permit would have to be approved before mining operations could take place on the tract. These monitoring and mitigation measures are considered to be part of the Proposed Action and Alternative 2 during the leasing process because they are regulatory requirements.

Background information on T&E species in the vicinity of the Belle Ayr North LBA Tract was drawn from several sources, including: the original baseline inventory (1974), wildlife survey reports submitted by the Belle Ayr Mine to the WDEQ/LQD from 1984 through 2006, the Final South Powder River Basin Coal EIS (BLM 2003), the Final EIS for the Maysdorf Coal Lease Application (BLM 2007), a Wyoming Natural Diversity Database search (University of Wyoming 2001), and from WGF and USFWS records and contacts in 2007. In addition, the Belle Ayr North LBA Tract wildlife study area falls within the wildlife monitoring areas for the nearby Caballo and Cordero Rojo Mines (Figure E-1).

Site-specific data for a substantial portion of the tract as applied for and the study area for Alternative 2 were obtained from several sources, including WDEQ/LQD permit applications and annual wildlife reports for the Belle Ayr Mine and other nearby coal mines. Baseline wildlife studies were conducted by Thunderbird-Jones & Stokes, expressly for the Belle Ayr North LBA Tract in 2006 early 2007.

The Belle Ayr North LBA Tract is in an area of gently rolling terrain of moderate relief influenced by Duck Nest Creek and other tributaries of Caballo Creek. Elevations range from 4,515 to 4,666 ft within the LBA tract and from 4,515 to 4,704 ft including the area added under Alternative 2. Within the LBA tract and the area added under Alternative 2, slopes range from flat to over 28 percent in the eastern portion of the tract, south of the Bishop Road. The slopes of the gently rolling uplands, which comprise most (about 74 percent) of the LBA tract, seldom exceed 4 percent. A slope analysis would be done for the LBA tract if a lease sale is held and it is proposed for mining.

Predominant wildlife habitat types classified on the LBA tract and adjacent area correspond with the major plant communities defined during the

vegetation baseline study and consist primarily of crested wheatgrass pasture and sagebrush/grassland. Other habitats present in limited extent include disturbed areas and grassland areas. Networks of road, pipeline, tank battery, and well-pad disturbance areas associated with oil and gas development overlay much of the study area.

The Belle Ayr Mine site is situated near the center of the PRB, which is a broad structural trough that lies between the Big Horn Mountains and the Black Hills. The PRB is drained by three separate drainage systems: the Powder/Little Powder, the Cheyenne, and the Belle Fourche Rivers. Lying between the Powder River and Cheyenne River drainage basins is the Belle Fourche River drainage system, which is a narrow, linear-shaped basin extending from the Pumpkin Buttes northeast to the Black Hills. The topography of the Belle Fourche drainage basin is typified by broad, flat, inter-stream uplands and a wide, level expanse of eastward-sloping plains broken by a few isolated buttes.

The Belle Ayr Mine lies within the Caballo Creek watershed, which is a tributary of the Belle Fourche River. Caballo Creek flows from west to east through the mine's permit area and empties into the Belle Fourche River approximately 7 miles east-southeast of the Belle Ayr North LBA Tract in Section 3, T.47N., R.70W. (Figure 3-27 in the SGAC EIS document). The total drainage for Caballo Creek is approximately 260 square miles, and the mainstream channel is about 51 miles long. The Caballo Creek watershed has a dendritic drainage pattern with an approximate width (north-south) of 12.8 miles and an approximate length (east-west) of 25.0 miles. The relief of Caballo Creek's basin is 740 feet from its headwaters to its confluence with the Belle Fourche River.

The Belle Ayr Mine disturbs several drainages within the Caballo Creek watershed and Caballo Creek is currently diverted by the mining operation. The Belle Ayr Mine is currently permitted to disturb approximately 7 percent of the Caballo Creek drainage basin. The entire undisturbed Caballo Creek drainage basin was extensively studied by the Belle Ayr Mine and the results of that study are included in the mine and reclamation permit (FCW 2003). A large portion of the Belle Ayr North LBA Tract is within the mine's existing permit area, and Duck Nest Creek, a southeast-flowing ephemeral tributary of Caballo Creek, drains the western portion of the LBA tract. Two smaller, first order tributaries of Caballo Creek (called Draw No. 1 and Draw No. 2 by the Belle Ayr Mine) and three playas formed by natural topographic depressions drain the eastern portion of the Belle Ayr North LBA Tract. The Belle Ayr Mine permit area, the Belle Ayr North LBA Tract, and a portion of the undisturbed Caballo Creek watershed are shown on Figure 3-27 in the SGAC EIS document.

Wetland inventories have been completed on those portions of Caballo Creek and its tributaries that lie within Belle Ayr Mine's existing permit area. A large portion of the Belle Ayr North LBA Tract is within the mine's existing permit area (Figure S1-6 in the SGAC Supplementary Information document);

therefore, a wetland inventory on Duck Nest Creek, including the entire stream segment that lies within the BLM study area for the LBA tract, has been conducted and is included in the mine's approved mine permit.

There have been numerous correspondences between the U.S. Army Corps of Engineers (COE) and Belle Ayr Mine on wetland inventories and determinations related to mine permit revisions. Most recently, on September 29, 1999, the COE conducted a site visit of wetland areas within the Belle Ayr Mine's permit area. Following that visit, a revised premining wetland delineation and discussion of wetlands to be impacted for the entire permit area was presented to COE in a letter from the mine, dated September 30, 1999. A response letter from COE to the mine, dated October 1, 1999, authorized the revised delineation and impact determination (FCW 2003). These premining wetland areas that occur within and adjacent to the Belle Ayr North LBA Tract are shown on Figure S1-6 in the SGAC Supplementary Information document.

Belle Ayr Mine's most recent delineation of wetlands and other Waters of the U.S. over the existing permit area identified these four types of wetlands: Man Made, Stream Channel, Saline, and Playa (FCW 2003). The man-made wetlands are found in association with small reservoirs and stock ponds. Stream channel wetlands are primarily moist to wet grassy meadows, usually less than 20 feet wide, and restricted to the stream channel and areas immediately adjacent to the stream bank. Saline wetlands occur only along the upper section of Duck Nest Creek and are characterized by saturated soils that commonly have salt deposits on the surface. Playa wetlands occur on areas with internal drainage that are intermittently flooded in response to spring runoff or runoff from intense thunderstorms. These individual wetland units and their respective areas (in acres) are shown within the Belle Ayr North LBA Tract wetlands analysis area on Figure S1-6 in the SGAC Supplementary Information document. Accordingly, a total of approximately 193.9 acres of Waters of the U.S., including a total of 14.4 acres of jurisdictional Waters of the U.S. occur within the wetlands analysis area for the Belle Ayr North LBA Tract. Approximately 11.9 of those acres are jurisdictional wetlands that occur along the watercourse of Duck Nest Creek. The 2.5 acres of jurisdictional other Waters of the U.S. that did not qualify as jurisdictional wetlands consist primarily of open water that is held within the in-channel impoundments and intermittent pools along Duck Nest Creek. The non-jurisdictional Waters of the U.S. contained in the wetlands analysis area (approximately 179.5 acres) consists of the internally drained playas.

Within the proposed lease area and adjacent study area there is no "critical" habitat designated by USFWS for T&E species. The following discussion describes species' habitat requirements and their occurrence in the area of the Belle Ayr North LBA Tract and evaluates the potential environmental effects of the Proposed Action and Alternative 2 on federal T&E species.

E-4.1 Threatened Species

E-4.1.1 Ute ladies'-tresses (*Spiranthes diluvialis*)

Ute ladies'-tresses, a member of the orchid family, was listed as threatened on January 17, 1992 due to a variety of factors, including habitat loss and modification, hydrological modifications of existing and potential habitat areas, and invasion of exotic plant species. At the time of listing, Ute ladies'-tresses was only known from north-central Colorado, northern and south-central Utah, and southeastern Nevada. As of September 2005, it had also been found in western Nebraska, southeastern Wyoming, southwestern Montana, and north-central Washington, while new populations had been documented in northwestern Colorado and northern Utah (Fertig, et al. 2005). USFWS has determined that a petition to remove the Ute ladies'-tresses orchid from federal protection under the Endangered Species Act provides substantial biological information to indicate that removal may be warranted. The petition was received from the Central Utah Water Conservancy District (USFWS 2004).

Biology and Habitat Requirements: Ute ladies'-tresses is a perennial, terrestrial orchid with erect, glandular-pubescent stems 8 to 20 inches tall arising from tuberous-thickened roots. This species typically flowers from late July through August. The flowers are white or ivory and clustered into a spike at the top of the stem; however, depending on location and climatic conditions, it may bloom in early July or still be in flower as late as early October (USFWS 2005b). Plants probably do not flower every year and may remain dormant below ground during drought years. The total known population of this species is currently estimated to be 60,000 individuals (USFWS 2004). Occurrences range in size from one plant to a few hundred individuals.

Ute ladies'-tresses occurs primarily on moist, subirrigated or seasonally flooded soils bordering wetland meadows, springs, lakes, or perennial streams. The elevation range of known occurrences is 4,200 to 7,000 feet in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows. Soils where the orchid has been found typically range from fine silt/sand to gravels and cobbles, as well as to highly organic and peaty soil types. The Ute ladies'-tresses orchid is not found in heavy or tight clay soils or in extremely saline or alkaline soils. The orchid seems intolerant of shade and small scattered groups are found primarily in areas where vegetation is relatively open (USFWS 2005). Ute ladies'-tresses orchid is commonly associated with horsetail, milkweed, verbena, blue-eyed grass, reedgrass, goldenrod, bentgrass and arrowgrass.

Populations are often dynamic and “move” within a watershed as disturbances create new habitat or succession eliminates old habitat (Fertig and Beauvais 1999). The orchid is well adapted to disturbances from stream movement and is tolerant of other disturbances, such as grazing, that are common to grassland riparian habitats (USFWS 1995). Ute ladies'-tresses colonize early successional riparian habitats such as point bars, sand bars, and low-lying

gravelly, sandy, or cobbly edges, persisting in those areas where the hydrology provides continual dampness in the root zone through the growing season. The orchid establishes in heavily disturbed sites, such as revegetated gravel pits, heavily grazed riparian edges, and along well-traveled foot trails on old berms (USFWS 1995).

Prior to 2005, four orchid populations had been documented within Wyoming, all discovered between 1993 and 1997 (Fertig and Beauvais 1999). Four additional sites were located in 2005 and one additional site was found in 2006 (Heidel, 2007). The new locations were in the same drainages or tributaries as the original four populations. Drainages with documented orchid populations include Antelope Creek and tributaries in northern Converse County, Bear Creek in northern Laramie and southern Goshen Counties, Horse Creek in Laramie County, and Niobrara River in Niobrara County. No occurrences have been recorded in Campbell County or in the Belle Ayr North wildlife general analysis area in Converse County.

Existing Environment: Areas of suitable habitat within the Belle Ayr North LBA Tract and adjacent study area were surveyed by ESCO Associates, Inc. of Boulder, Colorado in August 2006. Topographical and wetland delineation maps for the study area were reviewed to identify all significant drainages and potential habitat that may contain the orchid.

Suitable habitat was traversed on foot during the time of actual flowering of the known population, and it involved walking entire lengths of the drainages documenting locations of potential habitat and searching for this species.

The environs of the Duck Nest Creek drainage that passes through the study area constitute the closest approximation of suitable habitat for the plant. However, while naturally prone to accumulating moisture because of topographic position, they also are underlain by Arvada soils (or the similar saline phases of Heldt and Bidman soils) that have considerable salt accumulation, and, during dry years are themselves quite dry. As such, these areas do not constitute likely habitat for the plant by virtue of lack of dependable moisture and high salinity. A pedestrian survey of these areas in August 2006 revealed no individuals of Ute Ladies'-Tresses Orchid.

Playa Grassland was suggested by USFWS (personal communication) as suitable habitat and the portion of the LBA site occupied by this type was also searched in August 2006 with the same results. Eastern Wyoming playas, except during hypothetically potential extraordinary years of unrelenting rain, would probably never naturally sustain the moist conditions required by the orchid. Even following the springs when the playas do occasionally, but only temporarily, include standing water, subsequent summer conditions accompany a thorough drying that excludes any routine manifestation of moisture-loving perennial plant species such as the orchid.

Effects of the Proposed Project: Mining the federal coal included in the Belle Ayr North LBA Tract, if the tract is leased under the Proposed Action or Alternative 2, may affect, but is not likely to adversely affect Ute ladies'-tresses. Typical suitable habitat for this species on the tract is very limited and found along the CBNG-impacted bottomlands of Little Duck Nest Creek and its tributaries. However, the quality of potential habitat is extremely poor. Outside of the narrow riparian strips located along these impacted watercourses, typical suitable habitat is rare or non-existent in the study area. Multiple surveys of the existing suitable habitat at the Belle Ayr Mine and other mines in this area have not found any Ute ladies'-tresses. Because of the ability of this species to persist below ground or above ground without flowering, single season surveys that meet the current USFWS survey guidelines may not detect populations. If undetected populations are present, they could be lost to surface disturbing activities.

Jurisdictional wetlands located in the Belle Ayr North LBA Tract that are destroyed by mining operations would be replaced in accordance with the requirements of Section 404 of the Clean Water Act, as determined by COE. The replaced wetlands may not duplicate the exact function and landscape features of the pre-mine wetlands. COE considers the type and function of each jurisdictional wetland that will be impacted and may require restoration of additional acres if the type and function of the restored wetlands will not completely replace the type and function of the original wetland. Replacement of non-jurisdictional and functional wetlands may be required by the surface land owner and/or WDEQ/LQD. WDEQ/LQD allows and sometimes requires mitigation of non-jurisdictional wetlands affected by mining, depending on the values associated with the wetland features.

Cumulative Effects: Alterations of stream morphology and hydrology are believed to have extirpated Ute ladies'-tresses from most of its historical range (USFWS 2002). Disturbance and reclamation of streams by surface coal mining may alter stream morphology and hydrology. The large quantities of water produced with CBNG development and discharged on the surface may also alter stream morphology and hydrology.

E-4.2 Endangered Species

E-4.2.1 Black-footed ferret (*Mustela nigripes*)

The black-footed ferret is a nocturnal mammal and an obligate associate of prairie dogs (*Cynomys* spp.). Ferrets were listed as endangered in March, 1967. This species is thought to have historically inhabited prairie dog colonies in the short-grass prairies of the eastern and southern Rockies, and across the Great Plains of North America. However, since the early 1900s, numerous factors have led to a decrease in potential habitat to less than 2 percent of its former acreage.

Conversion of grasslands to agricultural landscapes, eradication of prairie dogs, and diseases such as the plague and canine distemper have resulted in severe reductions in prairie dog colonies across the west, colonies which provided food, shelter, and habitat for black-footed ferrets. This species of ferret is currently one of the most endangered mammals in North America and was thought to be extinct until a small population was discovered in Meeteetse, Wyoming in September, 1981. Since then, successful captive breeding and reintroduction programs have released black-footed ferrets back into the wild in several western and Great Plains states including Wyoming, Montana, South Dakota, Colorado, Utah, and Arizona.

Biology and Habitat Requirements: Ferrets rely on prairie dogs to provide both shelter and food (Hillman and Clark 1980). Ferrets produce one litter per year, typically giving birth to four or five kits. The decline in ferret populations has been largely attributed to the reduction in the vast prairie dog colonies that historically existed in the western United States. Despite extensive ferret surveys over the past 20 plus years throughout Wyoming, the last known wild black-footed ferret population was discovered near Meeteetse in 1981 (Miller et al. 1996). Those surveys included numerous USFWS-approved clearances for coal mining and other development in the Powder River Basin of Wyoming, as well as USDA-FS surveys for ferrets on the TBNG. Reintroduction efforts involving captive bred individuals have successfully established one black-footed ferret population in the Shirley Basin area in south-central Wyoming. Currently, this is the only known black-footed ferret population within the state, though other populations are present elsewhere in the United States and Mexico.

Existing Environment: The Belle Ayr North LBA Tract is within the historical range of the black-footed ferret, although no black-footed ferrets are presently known to occur in northeastern Wyoming. During the 1980s, WGFD, in cooperation with other agencies, conducted searches for black-footed ferrets in Wyoming in the places they were most likely to be found, but these searches were not successful (Martin Grenier, personal communication, 10/14/2003). In a February 2, 2004 letter to interested parties, the USFWS declared that black-footed ferret surveys are no longer necessary in black-tailed prairie dog colonies within Wyoming.

No black-tailed prairie dog colonies are currently present on the Belle Ayr North wildlife general analysis area. No evidence of ferrets has been recorded during general or specific ferret surveys over the last 30 years (1976–2006) conducted by wildlife consultants for the Belle Ayr Mine and other mines in this area.

Effects of the Proposed Project: **Mining the federal coal included in the Belle Ayr North LBA Tract, if a lease is issued under the Proposed Action or Alternative 2, would have no effect on black-footed ferrets.** Given the documented absence of black-footed ferrets in the region, including the general analysis area during specific surveys for this species, the lack of colonies

within the LBA tract and surrounding area, the block clearance issued by USFWS for black-tailed prairie dog colonies throughout the entire state, and the distance of the LBA area from future reintroduction sites, mining the general analysis area will not result in any direct or indirect effects on black-footed ferrets.

Mine activities include, but are not limited to, large-scale topsoil stripping, the intense presence of heavy machinery, extended human presence, loud noise and various linear disturbances such as roads, power lines and fences. Additionally, ongoing disturbance (grazing, oil and gas production, etc.) from sources unrelated to mining would likely continue, with some activities occurring within prairie dog colonies in the area. These activities would result in less habitat disturbance than surface mining, but physical disturbance would occur.

Based on more than 20 years of historic and recent survey efforts and other general analysis area data and information, it is unlikely that ferrets exist in the Belle Ayr North wildlife general analysis area.

Cumulative Effects: Mineral development within black-tailed prairie dog colonies is a leading cause of ferret habitat loss in the PRB. Surface coal mining tends to have more intense impacts on fairly localized areas, while oil and gas development tends to be less intensive but spread over larger areas. Oil and gas development and mining activities have requirements for reclamation of disturbed areas as resources are depleted. In reclaimed areas, vegetation cover may differ from undisturbed areas. In the case of surface coal mines, re-established vegetation would be dominated by species mandated in the reclamation seed mixtures (to be approved by WDEQ). The majority of the approved plant species are native to the area; however, reclaimed areas may not serve ecosystem functions presently served by undisturbed vegetation communities and habitats, particularly in the short-term, when species composition, shrub cover, and other environmental factors are likely to be different. Shifts in habitat composition or distribution following reclamation could increase or decrease potential habitat for prairie dogs and associated habitat for black-footed ferrets. However, black-tailed prairie dogs have been recorded invading and establishing towns on reclaimed coal mined lands in northeastern Wyoming (IR 2005).

Potential ferret habitat is also affected by other impacts to prairie dog populations. Plague can infect and eliminate entire prairie dog colonies. Poisoning and recreational prairie dog shooting may locally reduce prairie dog populations, but seldom completely eliminate colonies.

E-5.0 SUMMARY OF DETERMINATIONS

Table E-1 summarizes the determinations for federally listed T&E species in the area of the Belle Ayr North LBA Tract that may result from implementing the Proposed Action or Alternative 2.

Table E-1. Effects Evaluation of Federal T&E Species in the Area of the Belle Ayr North LBA Tract.

Status	Species Common Name	Potential Effects
Threatened:	Ute ladies'-tresses	May affect ¹
Endangered:	Black-footed ferret	No effect

¹ Not likely to adversely affect individuals or populations.

E-6.0 REGULATORY REQUIREMENTS AND MITIGATION

The issuance of a Federal coal lease grants the lessee the exclusive rights to mine the coal, subject to the terms and conditions of the lease. Lease ownership is necessary for mining federal coal, but lease ownership does not authorize mining operations. Surface coal mining operations are regulated in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977 and Wyoming State regulations. The Surface Mining Control and Reclamation Act gives the Office of Surface Mining Reclamation and Enforcement (OSM) primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations.

Pursuant to Section 503 of the Surface Mining Control and Reclamation Act, the WDEQ developed, and in November 1980 the Secretary of the Interior approved a permanent program authorizing WDEQ to regulate surface coal mining operations and surface effects of underground mining on nonfederal lands within the State of Wyoming. In January 1987, pursuant to Section 523(c) of the Surface Mining Control and Reclamation Act, WDEQ entered into a cooperative agreement with the Secretary of the Interior authorizing WDEQ to regulate surface coal mining operations and surface effects of underground mining on federal lands within the state. In order to get approval of this cooperative agreement, the state had to demonstrate that the state laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Surface Mining Control and Reclamation Act.

If the Belle Ayr North LBA Tract is leased, it would be a maintenance lease for the existing Belle Ayr Mine, which currently has both an approved Mineral Leasing Act of 1920 (MLA) mining plan and an approved State mining and reclamation permit. In the case of maintenance leases, such as the Belle Ayr North LBA Tract, the existing MLA mining plan and State mining and reclamation plan must be amended to include any newly leased area before that area can be mined.

In order to amend the existing MLA mining plan and State mining and reclamation permit, the company would be required to submit a detailed permit application package to WDEQ before starting surface coal mining operations on any newly acquired lease. WDEQ/LQD would review the permit application

package to insure the permit application complies with the permitting requirements and the coal mining operation will meet the performance standards of the approved Wyoming program. If the permit application package does comply, WDEQ would issue the applicant an amended permit that would allow the permittee to extend coal mining operations onto the newly acquired lease.

Protection of fish, wildlife, and related environmental values is required under the Surface Mining Control and Reclamation Act regulations at 30 CFR 816.97, which state:

“No surface mining activity shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended.”

In addition to requiring the operator to minimize disturbances and adverse impacts on fish, wildlife, and related environmental values, the regulations at 30 CFR 816.97 disallow any surface mining activity which is likely to jeopardize the continued existence of endangered or threatened species and require that the operator use the best technology currently available to : 1) minimize electrocution hazards to raptors; 2) locate and operate haul and access roads to avoid or minimize impacts on important fish and wildlife species; and 3) design fences, conveyors, and other potential barriers to permit passage of large mammals.

USFWS Section 7 consultation would be required prior to approval of the mining and reclamation plan modification. Additional measures to ensure compliance with the Endangered Species Act and the Surface Mining Control and Reclamation Act can be developed when the detailed mining plan, which identifies the actual location of the disturbance areas, how and when they would be disturbed, and how they would be reclaimed, is developed and reviewed for approval. At the leasing stage, a detailed mining and reclamation plan is not available for evaluation or development of appropriate mitigation measures specific to an actual proposal to mine.

The following is a partial list of measures related to federally-listed species that are required as part of the mining and reclamation permits:

- avoiding bald and golden eagle disturbance per the Bald and Golden Eagle Protection Act of 1940 and the Migratory Bird Treaty Act;
- restoring bald eagle foraging areas disturbed by mining;
- using raptor safe power lines; and
- surveying for Ute ladies'-tresses if habitat is present.

E-7.0 CUMULATIVE IMPACTS

Existing habitat-disturbing activities in the PRB include surface coal mining; conventional oil and gas and CBNG development; uranium mining; sand and gravel, and scoria mining; ranching; agriculture; road, railroad, and power plant construction and operation; recreational activities; and rural and urban housing development. Mining, construction and agricultural activities, and urban development tend to have more intense impacts on fairly localized areas, while ranching, recreational activities, and oil and gas development tend to be less intensive but spread over larger areas. Oil and gas development and mining activities have requirements for reclamation of disturbed areas as resources are depleted. The net area of energy disturbance in the Wyoming PRB has been increasing. In the short term, this means a reduction in the available habitat for T&E plant and wildlife species. In the long term, habitat is being and will continue to be restored as reclamation proceeds.

BLM is in the process of completing a regional technical study of current and proposed or potential development activity in the PRB to help the agency evaluate the impacts of coal development in the PRB. The *Powder River Basin Coal Review* consists of three tasks: Task 1 updates the BLM's 1996 status check for coal development in the PRB, Task 2 develops a forecast of reasonably foreseeable development in the PRB through the year 2020, and Task 3 predicts cumulative impacts that would be expected to occur as a result of the projected development. The information about existing development in the following paragraphs is taken from the *Powder River Basin Coal Review* Task 2 report (BLM 2005) and BLM lease records. The completed PRB Coal Review reports can be accessed at the BLM Wyoming website at <http://www.wy.blm.gov/minerals/coal/prb/prbdocs.htm>. The project area for Tasks 1 and 2 of the PRB Coal Review encompasses over eight million acres and includes all of Campbell, Sheridan, and Johnson Counties and the northern portion of Converse County in northeastern Wyoming.

Oil and gas exploration and production have been ongoing in the PRB for more than 100 years. Conventional (non CBNG) oil and gas fields are, for the most part, concentrated in the central and southern parts of the structural basin. Development of the CBNG resources from the coal beds is a more recent occurrence, with CBNG production in the Wyoming PRB starting in the late 1980s. As of 2003, an estimated 187,761 acres had been disturbed in the coal review project area as a result of oil and gas development activities, but approximately 115,045 acres of that disturbance has been reclaimed. This includes conventional oil and gas and CBNG wells and associated facilities and major transportation pipelines.

BLM estimates that the existing federal coal leases in the Wyoming PRB include approximately 121,185 acres. The currently pending federal coal LBA tracts (including the Belle Ayr North LBA Tract) include approximately 25,585 additional acres. The majority of the coal in the areas permitted for surface coal mining is federal, but some state and private leases are included within

some of the existing mine permit areas. All of the current and proposed federal coal leases are concentrated near the outcrop of the Wyodak coal bed, which is located in eastern Campbell County and the extreme northeastern edge of Converse County.

As of 2003, the base year for the PRB Coal Review, the surface coal mining operations along the Wyodak outcrop had disturbed approximately 68,794 acres. Approximately 24,097 of those acres of disturbance are occupied by “permanent” mine facilities, such as roads, buildings, coal handling facilities, etc., which are not available for reclamation until after coal mining operations end. Of the remaining 44,697 acres of disturbance available for reclamation, approximately 21,238 acres had been reclaimed.

The *Powder River Basin Coal Review* identified an estimated 4,891 additional acres of coal-related development disturbance (i.e., coal-fired power plants, railroads, and coal technology projects) as of 2003.

The estimated total development-related disturbance in the Wyoming PRB in 2003 was 264,704 acres. In addition to the coal and oil and gas development discussed above, this total includes other types of development disturbance, such as reservoirs and industrial fabrication firms, as well as public and private infrastructure, such as highways and roads, government buildings, and residential and commercial real estate development. It should be noted that some of these disturbances overlap one another. In such cases, the disturbance acreage is counted separately under each category, but is not counted twice in determining the total area of disturbance.

Cumulative effects would also occur to T&E plant and wildlife resources as a result of indirect impacts. One factor is the potential import and spread of noxious weeds around roads and facilities. Noxious weeds have the ability to displace native vegetation and hinder reclamation efforts. Control of noxious weeds is addressed in surface coal mining and reclamation plans. If weed mitigation and preventative procedures are applied to all construction and reclamation practices, the impact of noxious weeds on T&E plants and wildlife would be minimized.

In reclaimed areas, vegetation cover often differs from undisturbed areas. In the case of surface coal mines, re-established vegetation would be dominated by species mandated in the reclamation seed mixtures (to be approved by WDEQ). The majority of the species in the approved reclamation seed mixtures are native to the area; however, reclaimed areas may not serve ecosystem functions presently served by undisturbed vegetation communities and habitats. In the short-term in particular, species composition, shrub cover, and other environmental factors are likely to differ from pre-disturbance vegetation communities and habitats. Establishment of noxious weeds and alteration of vegetation in reclaimed areas has the potential to alter T&E plant and wildlife habitat composition and distribution.

Potential adverse effects to listed and proposed species that have occurred and would continue to occur as a result of existing and potential future activities in the PRB would include direct loss of habitat, indirect loss of habitat due to human and equipment disturbance, and habitat fragmentation. The existing mines have developed mitigation procedures, as required by the Surface Mining Control and Reclamation Act (at 30 CFR 816.97) and Wyoming State regulations, to protect T&E species. These procedural requirements would be extended to include mining operations on the Belle Ayr North LBA Tract, if it is leased as proposed and after required detailed plans to mine the coal and reclaim the mined-out areas are developed and approved.

E-8.0 CREDENTIALS OF SURVEY PERSONNEL

Thunderbird-Jones & Stokes of Gillette, Wyoming

Gwyn McKee

Ms. McKee obtained a Master of Science degree in Wildlife Ecology/Management from the University of Missouri-Columbia. She has accumulated nearly 20 years of professional experience, with the last 14 spent working with the energy industry in Wyoming, Montana, and South Dakota. Ms. McKee has conducted the wildlife surveys and impact analyses for most of the surface coal mines in the Powder River Basin during her tenure in Wyoming, including two of the three properties analyzed in the South Gillette Area Coal EIS. She has also provided and/or reviewed the pertinent text related to impact assessments for vertebrate species of concern for most of the coal EISs that have been prepared in the Powder River Basin since 2000.

Jennifer Ottinger

Ms. Ottinger received a B.S. in Zoology from Colorado State University in 1993, with a minor in Microbiology. She has 12 years of professional experience with a variety of vertebrate species, including surveys for sage-grouse and mountain plovers, though her work has focused on raptors during that period. Ms. Ottinger has worked throughout the U.S. and abroad. She joined Jones & Stokes as a Wildlife Biologist in 2004. She has strong raptor identification and handling skills, research experience, proven abilities in data analysis and technical writing, and has presented and/or published several articles in a variety of professional meetings and publications, respectively.

ESCO Associates Inc. (ESCO) of Boulder, Colorado

David L. Buckner

Education: B.A., M.A., and Ph.D. in Plant Ecology, University of Colorado, Boulder

Familiarity with *Spiranthes diluvialis*: observation of flowering populations in Boulder County, 1991-2005; observation of vegetative sprouts of individuals

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occurring in Boulder County populations, January to April 1992, June 1993, May 1995.

Other Rare Plant Survey Experience (representative): *Asclepias ruthiae*, Grand County, Utah, 1982; *Stellaria irrigua*, La Plata County, Colorado; *Sclerocactus glaucus*, Mesa and Garfield Counties, Colorado, 1987; *Penstemon harringtonii*, Eagle, Grand, and Routt Counties, Colorado, 1982, 1990, 1991, 1993, and 1994; *Ptilagrostis porteri*, Teller County, Colorado, 1992, *Carex oreocharis*, *Carex scirpoidea*, *Rubus (Cylactis) arctica* ssp. *acaulis*, *Mimulus gemmiparus*, *Salix candida*, *Aquilegia saximontana*, *Botrychium lunaria*, and *Listera borealis*, Clear Creek and Park Counties, Colorado 1995, 1996; *Lesquerella congesta*, *Physaria obcordata*, *Astragalus lutosus*, *Festuca dasyclada*, *Gentianella tortuosa*, *Lesquerella parviflora*, and *Thalictrum heliophilum*, Rio Blanco County, Colorado 2002.

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