

BELLE AYR NORTH

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

SEP 17 2009

In Reply Refer To:
ES-61411/AW.02/ WY0910376

Memorandum

To: Assistant Field Manager of Resources, Bureau of Land Management, Buffalo Field Office, Buffalo, Wyoming

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

Scott Hickm

Subject: Informal Consultation for the South Gillette Coal Lease Application

The U.S. Fish and Wildlife Service (Service) received the Bureau of Land Management's (Bureau) request for initiation of informal consultation, pursuant to the Endangered Species Act (Act) of 1973 as amended (50 CFR §402.13), for the proposed South Gillette Coal Lease, on August 19, 2009. The environmental consequences of this competitive lease of approximately 8,162 acres of Federal coal located adjacent to the Belle Ayr, Coal Creek, Caballo, and Cordero-Rojo mines in Campbell County, Wyoming, are described in a Final Environmental Impact Statement (FEIS). Appendix E of the FEIS contains the biological assessment (BA) evaluating the potential effects of the proposed lease on federally listed threatened and endangered species.

The federally listed species addressed in the BA are the threatened Ute ladies'-tresses (*Spiranthes diluvialis*) and the endangered blowout penstemon (*Penstemon haydenii*). As stated in the BA, the Bureau made a 'no effect' for blowout penstemon and a 'may effect, not likely to adversely affect' determination for Ute ladies'-tresses. Our office has reviewed the BA and the potential effects of the South Gillette Coal Lease on the Ute ladies'-tresses, in accordance with section 7(a)(2) of the Act, and this letter transmits the Service's concurrence.

Concurrence with Effects to Ute ladies'-tresses

There are no historical records of Ute ladies'-tresses orchids occurring in this lease tract; however, there are areas of potentially suitable habitat. Potentially suitable habitats in the coal lease tract occur primarily along Duck Nest Creek, Coal Creek and the Belle Fourche River. As documented in the BA, all areas of potentially suitable habitat in the South Gillette lease area were surveyed for Ute ladies'-tresses during the known flowering period for this species. Surveys for Ute ladies'-tresses were also conducted in portions of potentially suitable habitat in the proposed coal lease area in 2006 and 2007. No Ute ladies'-tresses orchids were found during any survey.

Based on 1) the documentation that no Ute ladies'-tresses orchids were found during multiple years of comprehensive surveys in all areas of potentially suitable habitat, and 2) much of the potential habitat is underlain by saline and/or ephemeral dry soils, the Service concurs with the Bureau that the proposed coal lease in the South Gillette tract is not likely to adversely affect Ute ladies'-tresses.

No-effect Determination

The Service acknowledges that the Bureau determined that the lease of Federal coal on the South Gillette tract will have no effect on the endangered blowout penstemon. When the Bureau makes "no effect" determinations, concurrence from the Service is not required, although, we appreciate receiving a copy of the data you used to make those determination for our records.

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 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 appreciate the Bureau's Buffalo Field Office efforts to ensure the conservation of threatened and endangered species. If you have any questions regarding this letter, please contact Scott Covington at the letterhead address or phone (307) 772-2374 extension 246.

cc: WGFD, Lander, Non-Game Coordinator (B.Oakleaf)
WGFD, Cheyenne, Statewide Habitat Protection Coordinator (M. Flanderka)