

APPENDIX A

The SHOSHONE-BANNOCK TRIBES



P. O. BOX 306
FORT HALL, IDAHO 83203
PHONE (208) 238-3706
FAX# (208) 237-0797

CULTURAL RESOURCES
HERITAGE TRIBAL OFFICE (HETO)
email: heto@poky.srv.net

December 11, 2001

Darlene Horsey, NEPA Coordinator
Rock Springs Field Office
280 Highway 191 North
Rock Springs, WY 82901

Dear Ms. Horsey:

The Shoshone-Bannock Heritage Tribal Office (HeTO) received the scoping notice for the PacifiCorp Jim Bridger Power Plant Flue Pond Expansion project. This office appreciates the opportunity to provide technical comments.

Has a recent cultural resource survey been conducted on the proposed area of this project? What plans are incorporated in the project contract to avoid, mitigate or deter from cultural resources? Should inadvertent discovery subsurface; we recommend that a "stop work" procedure be put into effect and contact appropriate agencies. Please provide additional information regarding additional ground disturbing activities and plans.

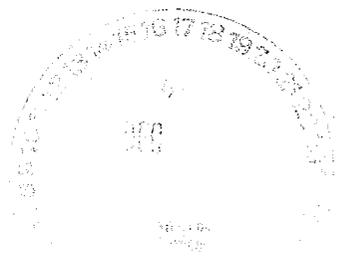
Should you have any concerns or questions, feel free to call me at (208) 478-3706.

Sincerely,

Diana K. Yupe
Tribal Anthropologist

DY/llb

Cc: file/BLM-Wyoming





Becky Heick
11/13/01 10:44 AM

To: Darlene Horsey/RSFO/WY/BLM/DOI@BLM
cc:
Subject: Re: Press Release- Jim Bridger Flue Pond

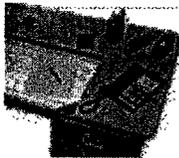
----- Forwarded by Becky Heick/RSFO/WY/BLM/DOI on 11/13/01 10:44 AM -----



Andy Tenney
10/30/01 10:55 AM

To: Darlene Horsey/RSFO/WY/BLM/DOI@BLM, Becky Heick/RSFO/WY/BLM/DOI@BLM
cc: Bernie Weynand/RSFO/WY/BLM/DOI@BLM
Subject: Re: Press Release- Jim Bridger Flue Pond 

Points to analyze in the NEPA.
Bernie Weynand



Bernie Weynand
10/30/01 10:52 AM

To: Andy Tenney/RSFO/WY/BLM/DOI@BLM
cc: Patricia Hamilton/RSFO/WY/BLM/DOI@BLM, Jim Dunder/RSFO/WY/BLM/DOI@BLM, Lorraine Keith/RSFO/WY/BLM/DOI@BLM
Subject: Re: Press Release- Jim Bridger Flue Pond 

Are we selling the land or leasing? The last time we dealt with flue gas washdown it was determined to be hazardous materials. BLM regs at the time prohibited us from having any hazardous materials on public land, is the situation still the same? If we are permitting this then the bird protection situation needs to be analyzed in depth. The hazing system may not be adequate.



Angelina Pryich
11/09/01 12:58 PM

To: Darlene Horsey/RSFO/WY/BLM/DOI@BLM
cc:
Subject: PacificCorp Flue Pond Expansion

----- Forwarded FROM THE PUBLIC MAIL BOX by Angelina Pryich/RSFO/WY/BLM/DOI on 11/09/01 12:57 PM -----



Craig Thompson
<CTHOMPSO@wwcc.
cc.wy.us>
11/09/01 11:55 AM

To: "rock_springs_wymail@blm.gov" <rock_springs_wymail@blm.gov>
cc:
Subject: PacificCorp Flue Pond Expansion

I ask that this scoping include a groundwater remediation plan for the
? contamination existing under the present pond as part of the FGD expansion
plan. This I would suggest that it is both cost effective and necessary to
prevent future expensive aquifer restoration.
Craig Thompson
Citizen

TOWN OF SUPERIOR

P.O. Box 40
Superior, Wyoming 82945
(307) 362-8173

November 8, 2001

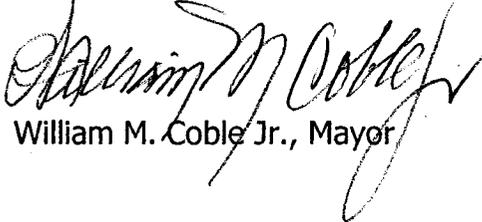
Darlene Horsey, NEPA Coordinator
Rock Springs Field Office
280 Highway 191 North
Rock Springs, WY 82901

RE: PacifiCorp Flue Pond Expansion

Dear Ms. Horsey:

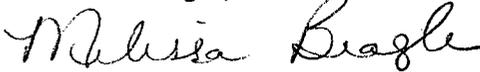
We appreciate the *Scoping Notice* of plans to expand a flue gas de-sulfurization pond at the Jim Bridger Power Plant. The Town of Superior's biggest concern is our three water wells that are located in the General Project Area. Our only supply of water for the Town comes from these three wells. After years of having contaminated water, the Town has worked hard to correct the problem and now has a completely new water system. We would like to know how the expansion would affect our water supply and/or our wells. The Town Council and myself would like to speak with someone about this project to get our questions and concerns answered.

Sincerely,



William M. Coble Jr., Mayor

Melissa Beagle, Council member



Pat Jennings, Council member



Richelle Johnson, Council member



Patrick S. O'Brien, Council member

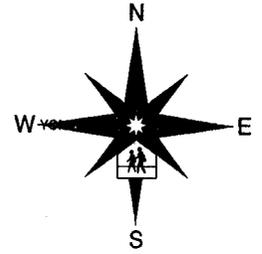


Cc: Mark Kot, County Planning



JIM GERINGER
GOVERNOR

State of Wyoming
Office of Federal Land Policy
Art Reese, Director



November 30, 2001

Darlene Horsey, NEPA Coordinator
Rock Springs Field Office
280 Highway 191 North
Rock Springs, Wyoming 82901

Re: PacifiCorp Jim Bridger Power Plant Flue Pond Expansion
State Identifier Number: 2001-160

Dear Ms. Horsey:

The Office of Federal Land Policy has reviewed the referenced scoping statement on behalf of the State of Wyoming. This Office also distributed the referenced document to all affected state agencies for their review, in accordance with State Clearinghouse procedures. Attached are comments from the Wyoming Game and Fish Department and the Wyoming Business Council. While the State defers to its agencies' technical expertise in developing the State's position, the responsibility to articulate balanced official, unified State policies and positions lies with the Governor or the Office of Federal Land Policy.

In this initial scoping stage, The State of Wyoming has no official position however, we do request that the attached agency comments receive your favorable consideration.

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

Sincerely,

A handwritten signature in cursive script that reads "Tracy J. Williams".

Tracy J. Williams
Planning Consultant

Encl s (2)

cc: Game and Fish Department
Wyoming Business Council



November 21, 2001

Wyoming State Clearinghouse
Office of Federal Land Policy
Herschler Building, 1 West
Cheyenne, WY 82002-06000

Re: OFLP Project # 2001-160 (PacifiCorp Jim Bridger Power Plant Flue Pond Expansion)

These comments regarding the PacifiCorp Jim Bridger Power Plant Flue Pond Expansion have been approved by the Director of the Wyoming Business Council's Minerals, Energy and Transportation Division and are specific to this agency's statutory mission within state government which is to be directly involved in state and federal policy work to assure reasonable access to public lands. 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.

The Wyoming Business Council's Minerals, Energy and Transportation Division has reviewed the above referenced scoping statement and feels it is in Wyoming's best interest to continue to pursue the proposed project. We look forward to reviewing the appropriate National Environmental Policy Act (NEPA) document, in order to gain a much broader understanding, and review of the specifics of the proposed action. In addition, we stand ready to provide any technical expertise or technical comments to assist in the formulation of a state position.

Thank you for the opportunity to comment.

John Robitaille
WBC Minerals, Energy and Transportation Division

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

WYOMING GAME AND FISH DEPARTMENT

Jim Geringer, Governor



John Baughman, Director

"Conserving Wildlife — Serving People"

November 6, 2001

WER 10168
Bureau of Land Management
Rock Springs Field Office
Scoping Notice
PacifiCorp, Jim Bridger Power Plant Flue Pond
Expansion
State Identifier Number: 2001-160
Sweetwater County

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

Dear Mr. Reese:

These comments regarding plans to expand a flue gas de-sulfurization pond at the Jim Bridger Power Plant by PacifiCorp 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.

Due to the heavily industrialized nature of the immediate vicinity, big game use of the area is insignificant and no crucial habitats occur in the area. The same is true for other species of interest, including sage grouse. The most significant wildlife use of the area comes from waterfowl and shorebirds that use largely man-made freshwater wetlands.

We do have a fishery established in a pond at the Jim Bridger Plant, but it is above this pond and would not be affected should a dam failure occur.

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

Although it is about 10 miles downstream, any release of effluent from the pond could end up in Bitter Creek. Appropriate precautions should be employed to prevent this.

Sincerely,

A handwritten signature in cursive script that reads "Bill Wichers". The signature is written in black ink and is positioned centrally on the page, below the word "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.



The State
of Wyoming



Department of Environmental Quality

Jim Geringer, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMIN/OUTREACH	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7758	(307) 777-8145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-3610	FAX 777-6462	FAX 777-5616	FAX 777-6937	FAX 777-5864	FAX 777-5973	FAX 777-6973

November 26, 2001

USDI Bureau of Land Management
Darlene Horsey, NEPA Coordinator
280 Highway 191 North
Rock Springs, WY 82901

Re: Response to the Scoping Notice for the Jim Bridger Power Plant Flue Pond Expansion Project

Dear Ms. Horsey:

These comments regarding the proposed Jim Bridger Power Plant Flue Pond Expansion Project in Sweetwater County are specific to this agency's statutory mission within State government which is protection of public health and the environment. 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.

Thank you for the opportunity to comment on the proposed flue pond expansion project.

There are two Water Quality Division (WQD) permits that may apply to the project. Any or all of them may apply depending on the eventual scope of the project.

- Discharge Permit.** Any discharges to "waters of the state" must be permitted under the National Pollutant Discharge Elimination System (NPDES) program. This program is part of the federal Clean Water Act, but is administered by the WQD. Coverage is required for discharges from cofferdam dewatering, discharges from hydrostatic pipeline testing, or discharge of other waste waters to waters of the state. For clarification waters of the state include rivers, streams, dry draws, wetlands, lakes, reservoirs, and even stock ponds. This permit will require some

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

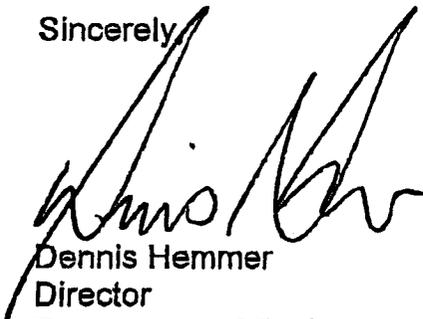
sampling and will incorporate effluent limits for any constituents of concern. Roland Peterson (307-777-7090) can provide additional information.

- Storm Water Associated with Construction Activities.** This permit is required any time a project results in clearing, grading, or otherwise disturbing five or more acres (one or more acres if reclamation is started in 2003 or later). The disturbed area does not need to be contiguous. The permit is required for surface disturbances associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpiling areas, equipment staging and maintenance areas and any other disturbed areas associated with construction. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for filing a Notice of Intent (NOI) and complying with the provisions of the general permit. The NOI should be filed no later than 30 days prior to the start of construction activity. Please contact Barb Sahl at 307-777-7570.
- Section 404.** While not a state permit, this project will require a section 404 permit from the US Army Corps of Engineers. Any time work occurs within waters of the US a 404 permit may be required. Please contact the Corps (307-772-2300) for specific information regarding jurisdiction and requirements.

These are the permits most likely to affect the project. The Department of Environmental Quality would like to see the NEPA analysis and resulting construction project address any potential effects to surface water quality that may occur as a result of existing or proposed construction practices in riparian areas. Also, every effort to prevent erosion of any kind should be taken. Any sediment created by the project can enter and effect the water quality of the receiving water

We appreciate the opportunity to comment in this process and look forward to working with you in the future. If you have any questions, please feel free to contact Jeremy Lyon at 307-777-7588.

Sincerely,



Dennis Hemmer
Director
Department of Environmental Quality

DH/JML/bb/13026.ltr

d:\spcwpd\spc01\lmbriidger_fluepond.let



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
WYOMING REGULATORY OFFICE
2232 DELL RANGE, BLVD., SUITE 210
CHEYENNE, WYOMING 82009-4942

REPLY TO
ATTENTION OF:

November 5, 2001

Wyoming Regulatory Office

Ms. Darlene Horsey
NEPA Coordinator
U.S. Bureau of Land Management
Rock Springs Field Office
280 Highway 191 North
Rock Springs, Wyoming 82901

Dear Ms. Horsey:

This letter is in response to the Scoping Notice dated November 1, 2001, that we received from your office. The notice described PacifiCorp plans to expand a flue gas de-sulfurization pond (Pond 2) at the Jim Bridger Power Plant located about 25 miles northeast of Rock Springs, Wyoming. The pond is located in Sections 25, 26, and 36, Township 21 North, Range 101 West, Sweetwater County, Wyoming.

Your agency is preparing an Environmental Assessment (EA) on the project in accordance with the requirements of the National Environmental Policy Act (NEPA). Your scoping notice requested comments on the proposal.

The U.S. Army Corps of Engineers regulates the placement of dredged and fill material into wetlands and other waters of the United States as authorized primarily by Section 404 of the Clean Water Act (33 U.S.C. 1344). The term "waters of the United States" has been broadly defined by statute, regulation, and judicial interpretation to include all waters that were, are, or could be used in interstate commerce such as rivers, streams (including ephemeral streams), reservoirs, and lakes as well as wetlands adjacent to those areas. Wetlands are defined as areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands are characterized by growth of vegetation such as bulrush, cattails, rushes, sedges, and willows. Wetlands not only provide wildlife habitat but also improve water quality by holding sediment and taking up nutrients. In many cases, wetlands decrease flooding by storing surface water and recharging ground water in flood plains.

The Corps regulations were published in the November 13, 1986, edition of the Federal Register (Vol. 51, No. 219) at 33 CFR Parts 320 through 330. Information on Section 404 program requirements in Wyoming can be obtained by visiting our web site at <http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.html>.

In a letter dated May 21, 2001, Mr. W. Craig Seamons, PE, Project Manager for PacifiCorp, described the flue gas de-sulfurization (FGD) ponds located at the Jim Bridger Power Plant. Based on that information and a telephone conversation on June 28, 2001, with Mr. Seamons, we determined that FGD ponds 1 and 2 are not waters of the United States. In a letter dated June 29, 2001, we advised Mr. Seamons of that determination. A copy of that letter is enclosed.

Therefore, we have no comments on the proposed project. If you have any questions regarding our determination, please contact me at (307) 772-2300 and reference file No. 200140161.

Sincerely,



Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

Enclosure

Copy Furnished:

Mr. W. Craig Seamons, PE
Project Manager
PacifiCorp
North Temple Office
1407 West North Temple, Suite 210
Salt Lake City, Utah 84140



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001



ES-61411
mf/W.02/(wy5255.wpd)

November 30, 2001

Memorandum

To: Darlene Horsey, NEPA Coordinator, BLM Rock Springs Field Office, Rock Springs,
WY
Peter R. Smith Acting

From: Field Supervisor, ES, Cheyenne, WY (ES-61411)

Subject: PacifiCorp Flue Pond Expansion Scoping

Thank you for your letter of November 1, 2001, regarding the PacifiCorp Flue Gas Desulfurization (FGD) Pond Expansion Project in Sweetwater County, Wyoming. The U.S. Fish and Wildlife Service (Service) would like the following addressed in the environmental document:

- migratory bird mortality in the FGD pond;
- the effectiveness of current bird hazing at the FGD pond;
- effects on federally-listed threatened and endangered species; and
- other alternatives for the disposal of FGD wastewater.

Migratory Bird Mortality

The Service continues to have concerns over migratory bird mortality in the FGD evaporation ponds. The FGD ponds receive FGD liquor which is high in sodium, chloride, sulfates, carbonates and bicarbonates. The high alkalinity of the FGD liquor keeps the pond ice-free, so it attracts migratory aquatic birds, especially in the late fall, winter and early spring when all other water-bodies are frozen. At temperatures below 70° F, sodium decahydrate crystallizes on any solid object in or on the water. The salt crystallizes on the feathers of any bird on the water and destroys their insulation and buoyancy. This leads to hypothermia or causes the birds to drown. Birds may also die from sodium toxicity by ingesting the water. Elevated sodium concentrations in the FGD Pond present the greatest risk to aquatic birds. Salt toxicosis in waterfowl has been reported in ponds with sodium concentrations over 17,000 milligrams per liter (mg/l) (Windingstad et al. 1987). Canada geese mortality due to sodium toxicity and salt crystallization was reported at a hypersaline lake with sodium concentrations ranging from 30,800 to 36,950 mg/l in Saskatchewan, Canada (Wobeser and Howard 1987). Sodium concentrations in the FGD

Pond ranged from 52,000 to 66,000 mg/l (Ramirez 1992). In a December 30, 1991 letter from Dr. Merl F. Raisbeck, veterinary pathologist, University of Wyoming, Laramie, to Monte Garrett, Pacific Power, Dr. Raisbeck concluded that "exposure to FGD pond water is potentially toxic to migratory waterfowl." Dr. Raisbeck found that brain sodium concentrations in birds spending a minimum of 3 hours on the FGD pond exceeded the concentration considered toxic ($>1,800 \mu\text{g/g}$ or ppm). Ingestion of water containing high sodium concentrations can also pose chronic effects to aquatic birds. Cooch (1964) found that aquatic birds ingesting water with large amounts of dissolved salts can make the birds more susceptible to avian botulism.

PacifiCorp implemented a bird hazing program on FGD Pond # 1 as a result of the Service informing PacifiCorp, the operator of the power plant, of their liabilities under the Migratory Bird Treaty Act (MBTA). The MBTA (16 USC 703-711) prohibits the "taking" of migratory birds. Taking can include the following activities resulting in migratory bird mortalities: exposed oil waste pits, hazardous materials spills, hazardous waste pits and oil spills. The maximum criminal penalty for corporations unlawfully taking a protected migratory bird is a \$10,000 fine, or 6 months in jail, or both for each count. There is no "allowable take" under the MBTA, the taking of just one bird is a violation of the Act. Courts have almost uniformly held the MBTA to be a strict liability criminal statute.

PacifiCorp's current bird hazing program involves a radar-activated acoustical hazing system. The Service would like a copy of all reports containing information on bird mortality occurring on the FGD ponds with the current hazing program in order to evaluate its effectiveness. The environmental document should include information detailing the effectiveness of the bird hazing program in preventing mortality of migratory birds. Additionally, the environmental document should evaluate the effectiveness of such a system on the FGD pond when expanded from 225 acres to 402 acres. Increasing the size of the FGD pond may also increase the difficulty of implementing measures to prevent migratory bird mortality or decrease the effectiveness of bird hazing.

Raptor-Proofing Additions or Improvements to Facilities

Two primary causes of raptor mortality are electrocutions and collisions with power lines. If any part of this project will involve construction of new power lines or modification of existing lines, the Service urges PacifiCorp to take strong precautionary measures to protect raptors by raptor-proofing the power lines. Structures which are designed for raptor protection should be in accordance with Suggested Practices For Raptor Protection on Power Lines. The State of the Art. Raptor Research Report, 1996, (or more current edition, if available) published by the Raptor Research Foundation, Inc., provided that such structures meet with the National Electrical Safety Code. Authority for these measures resides with Section 9 of the Act the Migratory Bird Treaty Act and the Bald Eagle Protection Act which protects bald and golden eagles. In the above cited Federal Register publication, the following bulletins are also recommended: REA Bulletin 40-7, National Electrical Safety Code-ANSI C2, 1981 Edition and REA Bulletin 61-60, Powerline Contacts by Eagles and Other Large Birds.

The potential for mortality of federally listed threatened and endangered species in the FGD pond should also be addressed in the environmental document, in particular avian species which could be attracted to the FGD pond. Other impacts to non-avian listed species as a result of FGD pond expansion should also be addressed. In accordance with section 7(c) of the Endangered Species Act of 1973, as amended (Act), my staff has determined that the following threatened or endangered species, or species proposed for listing under the Act, may be present in the project area.

Listed and Proposed Species

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Black-footed ferret (<i>Mustela nigripes</i>)	Endangered	Potential resident in prairie dog (<i>Cynomys</i> sp.) colonies.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Nesting. Winter resident. Migrant.
Mountain plover (<i>Charadrius montanus</i>)	Proposed	Grasslands statewide
Whooping crane (<i>Grus americana</i>)	Experimental (Rocky Mtn. pop'n only)	Resident. Migrant.
Ute ladies'-tresses (<i>Spiranthes diluvialis</i>)	Threatened	Seasonally moist soils and wet meadows of drainages below 7000 feet elevation.

Black-footed ferret

Black-footed ferrets may be affected if prairie dog colonies are impacted. If white-tailed prairie dog (*Cynomys leucurus*) colonies or complexes greater than 200 acres will be disturbed, surveys for ferrets should be conducted even if only a portion of the colony or complex will be disturbed. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

Bald eagle

Work that may affect these birds, their young, eggs, or nests (for example, if you are going to undertake construction in the vicinity of a nest), should be coordinated with our office before any actions are taken in order to determine if consultation under the Act may be necessary. The Service recommends the project area be surveyed for nesting eagles and roost areas. If any active nests or roost areas are identified within 1 mile of the proposed project, we recommend avoiding work in the area between February 15 and August 15 and avoiding impacts to any nests and roost areas. If timing and/or location of the work cannot be modified to avoid possible impacts you should contact this office to discuss consultation requirements pursuant to the Act.

Mountain Plover

In the Federal Register dated February 16, 1999, the Service gave notice of a proposal to list the mountain plover (*Charadrius montanus*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Available data indicate that population numbers have declined range-wide by more than 50 percent since 1966 to fewer than 10,000 birds. The mountain plover is a small bird associated with shortgrass prairie, plains, alkali flats, agricultural

lands, cultivated lands, sod farms, prairie dog towns, and shrub-stepped landscapes at both breeding and wintering locales. Plovers may nest on sites where vegetation is sparse or absent, or near closely cropped areas, manure piles or rocky areas. Mountain plovers are rarely found near water and show a preference for previously disturbed areas or modified habitat. It occupies suitable breeding habitat in many of the great Plains states from Canada south to Texas from late March through July.

Whooping Crane

The whooping crane (*Grus Americana*) is the tallest bird in North America, standing 5 feet. It has a long sinuous neck and long legs. It has snowy white feathers with jet-black wing tips, with a red and black head and long pointed beak. The whooping crane nests in marshy areas among bulrushes, cattails, and sedges that provide protection from predators. They eat insects, minnows, crabs, crayfish, frogs, rodents, small birds, and berries. Whooping cranes are very sensitive to human disturbance.

Whooping crane populations within Wyoming are considered part of the nonessential experimental population. Although these birds remain listed and protected under the Act, additional flexibility is provided for their management. Requirements for interagency consultation under section 7 of the Act differ based on the surface ownership and/or management responsibility where the birds occur. Additional management flexibility is provided for managing whooping cranes existing outside units of the National Park or National Wildlife Refuge System (e.g. Forest Service lands). Whooping cranes designated as nonessential experimental in these areas are treated as proposed rather than listed. Two provisions of section 7 apply to Federal actions outside National Parks or National Wildlife Refuges: (1) section 7(a)(1), which states all Federal agencies shall utilize their authorities to carry out programs for the conservation of listed species; and (2) section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of the species.

Ute Ladies'-tresses

Ute ladies'-tresses is a perennial, terrestrial orchid with stems 2 to 5 dm tall, narrow leaves, and flowers consisting of few to many small white or ivory flowers clustered into a spike arrangement at the top of the stem. It blooms from late July through August, however, depending on location and climatic conditions, orchids may bloom in early July or still be in flower as late as early October. The Ute ladies'-tresses is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams. It occurs generally in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows at elevations from 4,200 to 7,000 feet. The orchid colonizes 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. Recent discoveries of orchid colonies in Wyoming and Montana indicate that surveys for and inventories of orchid occurrences continue to be an important part of orchid recovery planning and implementation.

Consultation

Section 7(c) of the Act requires that a biological assessment be prepared for any Federal action that is a major construction activity to determine the effects of the proposed action on listed and proposed species. If a biological assessment is not required (i.e., all other actions), the lead Federal agency is responsible for review of proposed activities to determine whether listed species will be affected. We would appreciate the opportunity to review any such determination document. If it is determined that the proposed activities may affect a listed species, you should contact this office to discuss consultation requirements. If it is determined that any Federal agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so we can work together to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold. If it is concluded that the project "is not likely to adversely affect" listed species, we should be asked to review the assessment and concur with the determination of not likely to adversely affect.

For those actions where a biological assessment is necessary, it should be completed within 180 days of receipt of a species list, but can be extended by mutual agreement between the lead agency and the Service. If the assessment is not initiated within 90 days of receipt of a species list, the list of threatened and endangered species should be verified with this office prior to initiation of the assessment. The biological assessment may be undertaken as part of the agency's compliance of section 102 of the National Environmental Policy Act (NEPA), and incorporated into the NEPA documents. The Service recommends that biological assessments include:

1. a description of the project;
2. a description of the specific area potentially affected by the action;
3. the current status, habitat use, and behavior of threatened and endangered species in the project area;
4. discussion of the methods used to determine the information in item 3;
5. direct and indirect impacts of the project to threatened and endangered species, including impacts of interrelated and interdependent actions;
6. an analysis of the effects of the action on listed and proposed species and their habitats including cumulative impacts from Federal, State, or private projects in the area;
7. measures that will reduce or eliminate adverse impacts to threatened and endangered species;
8. the expected status of threatened and endangered species in the future (short and long term) during and after project completion;
9. determination of "is likely to adversely affect" or "is not likely to adversely affect" for listed species;
10. determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species;
11. Alternatives to the proposed action considered, a summary of how impacts of those alternatives on listed and proposed species would differ from the proposed action, and the reasons for not selecting those alternatives.
12. citation of literature and personal contacts used in the assessment.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for section 7 compliance remains with the Federal agency, and written notice should be provided to the Service upon such a designation. We recommend that Federal agencies provide their non-Federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of the Act requires that the Federal agency and permit or license applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.

Regarding species proposed for listing, Federal agencies must determine whether any of their proposed activities are likely to jeopardize the continued existence of the species. If jeopardy is likely, that agency must confer with the Service.

We will work with the lead Federal agency in the section 7 consultation process. The analysis of project impacts must assess direct impacts of the project, as well as those impacts that are interrelated to or interdependent with the proposed action. Impacts to listed species on non-Federal lands must be evaluated along with such impacts on Federal lands. Any measures that are ultimately required to avoid or reduce impacts to listed species will apply to Federal as well as non-Federal lands.

Candidate Species

The yellow-billed cuckoo (*Coccyzus americanus*) a species that is a candidate for listing as threatened or endangered may occur within the project area. On July 25, 2001, the Service designated the yellow-billed cuckoo, in a portion of its range, as a candidate species under the Act. The yellow-billed cuckoo is a secretive, robin-sized bird that in the western United States breeds in willow and cottonwood forests along rivers and streams. The bird's most notable features are a long, boldly-patterned black-and-white tail, and an elongated and down-curved bill, which is yellow on the bottom. Its plumage is grayish-brown above and white below. Adults have narrow, yellow eye rings. The bird primarily eats large insects including caterpillars and cicadas as well as the occasional small frog or lizard.

Many Federal agencies have policies to protect candidate species from further population declines. We would appreciate receiving any information available on the status of this species in or near the project area. In addition, if this species is listed prior to the completion of your project, unnecessary delays may be avoided by considering project impacts to it now. Should the yellow-billed cuckoo species be proposed for listing, the lead Federal agency would be required to confer with this office if that agency determines their action (e.g. approval of the project) is likely to jeopardize the continued existence of any of these species.

Wetlands/Riparian Areas: The Service recommends measures be taken to avoid any wetland losses in accordance with Section 404 of the Clean Water Act, Executive Order 11990 (wetland protection) and Executive Order 11988 (floodplain management) as well as the goal of "no net

loss of wetlands." If wetlands may be destroyed or degraded by the proposed action, those (wetlands) in the project area should be inventoried and fully described in terms of functions and values. Acreage of wetlands, by type, should be disclosed and specific actions outlined to minimize impacts and compensate for all unavoidable wetland impacts.

Riparian or streamside areas are a valuable natural resource and impacts to these areas should be avoided whenever possible. Riparian areas are the single most productive wildlife habitat type in North America. They support a greater variety of wildlife than any other habitat. Riparian vegetation plays an important role in protecting streams, reducing erosion and sedimentation as well as improving water quality, maintaining the water table, controlling flooding, and providing shade and cover. In view of their importance and relative scarcity, impacts to riparian areas should be avoided. Any potential, unavoidable encroachment into these areas should be minimized and quantitatively assessed in terms of functions and values, areas and vegetation type lost, potential effects on wildlife, and streams (bank stability and water quality). Measures to compensate for unavoidable losses of riparian areas should be developed and implemented as part of the project.

Plans for mitigating unavoidable impacts to wetland and riparian areas should include mitigation goals and objectives, methodologies, time frames for implementation, success criteria, and monitoring to determine if the mitigation is successful. The mitigation plan should also include a contingency plan to be implemented should the mitigation not be successful.

Alternatives

The environmental document should evaluate alternatives to the use of FGD ponds for disposal of the wastewater. The use of brine concentrators to reduce sodium concentrations in the FGD wastewater should be evaluated. Several coal-fired power plants use brine concentrators to treat FGD wastewater (Ramirez 1992). Other options that should be evaluated include deep well injection, transporting the wastewater to a trona processing plant for removal of the trona, or solidifying the FGD effluents.

Technology is available to convert the sodium sulfate in the FGD wastewater to calcium sulfate and recycle the sodium salts back to the scrubber for reuse. The calcium sulfate materials can then be pozzolanically stabilized with the resulting end product consisting of a cementitious material (Smith 1987, Smith and Rau 1981, Van Ness et al 1983).

In summary, the environmental document should provide the following information:

- number and types of birds attracted to the FGD ponds;
- extent of bird mortality at the FGD ponds;
- estimate in the increase of bird mortality due to FGD pond expansion;
- effectiveness of the existing bird hazing program in preventing migratory bird and threatened and endangered species mortality;
- measures under consideration to further reduce or prevent bird mortality; and
- alternatives for the disposal of the FGD wastewater that do not involve the use of evaporation ponds.

These preliminary scoping comments are made pursuant to the National Environmental Policy Act, the Endangered Species Act and Fish and Wildlife Coordination Act. Please keep this office informed of any developments or decisions concerning this project. If you have any questions please contact Michelle Flenner or Pedro 'Pete' Ramirez of my staff at the letterhead address or phone (307) 772-2374.

cc: Special Agent, U.S. Fish and Wildlife Service, Casper, WY
Special Agent, U.S. Fish and Wildlife Service, Lander, WY
Director, WGFD, Cheyenne, WY

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