ATTACHMENT 4:

U.S. FISH AND WILDLIFE SERVICE CONCURRENCE LETTER IN RESPONSE TO BLM FORMAL REQUEST FOR CONSULTATION FOR THE FIVE SOUTH POWDER RIVER BASIN COAL LEASE BY APPLICATION TRACTS UNDER THE ENDANGERED SPECIES ACT, SECTION 7

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

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CASPER FIELD OFFICE

In Reply Refer To:
ES-61411/W.02/WY7940

February 14, 2004

Memorandum

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

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

Subject: Concurrence for the Five South Powder River Basin Coal Lease By Application Tracts (North Antelope/Rochelle North, North Antelope/Rochelle South, Little Thunder, West Roundup, and West Antelope)

Thank you for your letter and attached biological assessments for the North Antelope/Rochelle North and North Antelope/Rochelle South, Little Thunder, West Roundup, and West Antelope Lease-By-Application (LBA) tracts, dated December 31, 2003, received in the Wyoming Field Office on January 2, 2004. In your letter you requested the U.S. Fish and Wildlife Service (Service) review the four biological assessments and provide written concurrence pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (50 CFR §402.13).

The Bureau of Land Management (Bureau) has made "no effect" determinations for the black-footed ferret (*Mustela nigripes*). When the Bureau makes a "no effect" determination, concurrence from the Service is not required, although, we do appreciate receiving a copy of the data used to make that determination for our records.

The Bureau has determined that the leasing of the five LBA tracts is not likely to jeopardize the continued existence of the mountain plover (*Charadrius montanus*). The Service has withdrawn the proposal to list the mountain plover and we will no longer be reviewing project impacts to this species under the Act. We do however, encourage the Bureau and their applicants to continue providing protection for this species as it remains protected under the Migratory Bird Treaty Act (16 U.S.C. 703) and as a sensitive species under Bureau policy (Bureau Manual 6840.06 E. Sensitive Species). Measures to protect the mountain plover from further decline may include (1) avoidance of suitable habitat during the plover nesting season (April 10 through July 10), (2) prohibition of ground disturbing activities in prairie dog towns, and (3) prohibition of any permanent above ground structures that may provide perches for avian predators or deter

plovers from using preferred habitat. Suitable habitat for nesting mountain plovers includes grasslands, mixed grassland areas and short-grass prairie, shrub-steppe, plains, alkali flats, agricultural lands, cultivated lands, sod farms, and prairie dog towns

Based on the information provided in the four biological assessments (North Antelope/Rochelle North and North Antelope/Rochelle South, Little Thunder, West Roundup, and West Antelope) the Service concurs with the Bureau's determination that leasing the five LBA tracts may affect, but is not likely to adversely affect the bald eagle (*Haliaeetus leucocephalus*) or the Ute ladies'-tresses orchid (*Spiranthes diluvialis*). Annual surveys of the existing mine permit areas and a 1 mile buffer and surveys of the proposed LBA tracts have shown that there are no nesting bald eagles or winter roost sites within these LBA tracts. Multiple year surveys of suitable habitat within the North Antelope/Rochelle North and North Antelope/Rochelle South, Little Thunder, West Roundup and West Antelope LBA tracts have failed to find evidence of Ute ladies'-tresses orchid. Additionally, suitable habitat along the Antelope Creek valley on the West Antelope LBA tract would not be disturbed by mining on this tract.

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

If you have any questions regarding this letter or your responsibilities under the Act, please contact Bradley Rogers of my staff at the letterhead address or phone (307) 772-2374, extension 25.

cc: BLM-State Office, Multi-Resources Chief, Cheyenne, WY (M. Griffith)
FWS, Federal Activities Specialist, Denver, CO (R. Dach)
WGFD, Statewide Habitat Protection Coordinator, Cheyenne, WY (T. Collins)
WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)