APPENDIX A

FORMAL AND INFORMAL CONSULTATION

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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In Reply Refer To:
ES-61411/W.02/WY8087

March 26, 2004

Memorandum

To: Kurt Kotter, Field Manager, Bureau of Land Management, Rawlins Field Office, Rawlins, Wyoming

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

Subject: Formal and Informal Consultation for the Desolation Flats Natural Gas Project

Thank you for your letter of February 24, 2004, regarding the proposed Desolation Flats natural gas project located in T13-16N, R93-96W, in Sweetwater County, Wyoming. The project includes 385 natural gas wells and associated facilities in an area where 63 gas wells currently exist. You have requested concurrence for your determination of effects to listed and proposed species from this project pursuant to the Endangered Species Act of 1973, as amended (Act), 16 U.S.C. 1531 *et seq*. The U.S. Fish and Wildlife Service (Service) is providing you with concurrence and comments based on the information you have provided in your letter as well as the biological assessment (BA) included in the *Draft Environmental Impact Statement for the Desolation Flats Natural Gas Field Development Project* (April 2003).

You have stated that two white-tailed prairie dog (*Cynomys leucurus*) complexes have been mapped within the Desolation Flats project area. The complexes total nearly 10,000 acres and may provide habitat for black-footed ferrets (*Mustela nigripes*). As you know, because of recent efforts by the Service, the Wyoming Game and Fish Department and other agencies, several areas where prairie dogs occur in Wyoming have been "block cleared" from survey requirements. Please refer to our attached letter for clarification on this matter.

At this time, prairie dog towns and complexes within the Desolation Flats project area have <u>not</u> been "block cleared" and may warrant surveys pursuant to the *Black-Footed Ferret Survey Guidelines* (April 1989). The Service concurs with your "may affect, but not likely to adversely affect" determination for the black-footed ferret based on your commitment to conduct surveys prior to disturbance. Should a ferret or their sign be observed you have stated that all project related activities would be modified to avoid the respective town or complex and the Service would be notified immediately.

You have stated that the Desolation Flats project area does not provide suitable habitat for Canada lynx (*Lynx candensis).* However, your letter also states that the project "may affect, but is not likely to adversely affect" the lynx. To clarify your effects determination we contacted Mary Read, wildlife biologist, of your office on March 26, 2004. Ms. Read confirmed that no suitable habitat occurred within, or near the project area. Upon reviewing the potential effects to Canada lynx she believed that there would be "no effect" to the species from this project. The Service's concurrence for a "no effect" determination is not required. However, we appreciate the information the Bureau of Land Management (Bureau) has provided and their extensive review of the species status and potential effects from this project.

You have stated that the Desolation Flats project area does not provide nesting or roosting habitat for the bald eagle (*Haliaeetus leucocephalus*). However, you have indicated that bald eagles may occasionally fly over the project area. Additionally, due to vehicular traffic on project roads, there may be an increase in wildlife-vehicle collisions, perhaps resulting in carrion that may attract bald eagles to feed. The Service concurs with your "may affect, but not likely to adversely affect" determination based on (1) your commitment to implement training for regular project area drivers that will encourage decreased speeds and other measures to avoid collisions with eagles, and (2) encourage immediate removal of carcasses from the right of way. These measures will reduce the bald eagles presence within the project area and minimize potential effects.

Your letter states that the permittee will be allowed to obtain water, for dust abatement, from wells that are not hydrologically connected to the Colorado River System. However, you further state that a third party contractor could mistakenly obtain water from a location that is indeed hydrologically connected to the system. Therefore you have requested formal consultation for your determination of effects to the four endangered fishes of the Colorado River system from water depletions from this project. In accordance with section 7 (a)(2) of the Act, the Service has reviewed the information you have provided regarding the effects. We understand that the proposed action will cause an average annual depletion of 2.30 acre-feet.

A Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program) was initiated on January 22, 1988. The Recovery program was intended to be the reasonable and prudent alternative to avoid jeopardy to the endangered fish by depletions from the Upper Colorado River.

In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. Incorporated into this agreement is a Recovery Implementation Program Recovery Action Plan (Plan), which identifies actions currently, believed to be required to recover the endangered fish in the most expeditious manner in the Upper Colorado River Basin.

A part of the Recovery Program was the requirement that if a project was going to result in a depletion, a depletion fee would be paid to help support the Recovery Program. On July 5, 1994, the Service issued a biological opinion determining that the fee for depletions of 100 acre-feet or less would no longer be required. This was based on the premise that the Recovery Program has made sufficient progress to be considered the reasonable and prudent alternative avoiding the

likelihood of jeopardy to the endangered fishes and avoiding destruction or adverse modification of their critical habitat by depletions of 100 acre-feet or less. Therefore, **the depletion fee for this project is waived**.

Permits or other documents authorizing specific projects, which result in depletions, should state that the Bureau of Land Management (Bureau) retains discretionary authority over each project for the purpose of endangered species consultation. If the Recovery Program is unable to implement the Plan in a timely manner, reinitiation of section 7 consultation may be required so that a new reasonable and prudent alternative can be developed by the Service.

This concludes consultation pursuant to the regulations implementing the Act, 50 C.F.R. §402.14 and §402.13. 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 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 this project.

To further the conservation of the bald eagle we recommend that the Bureau contact the Service's Wyoming Field Office at (307) 772-2374 and the Service's Law Enforcement office at (307) 261-6365 in the event that a bald eagle is found injured or dead. We further recommend that any and all electrical power lines be constructed to meet the standards of the Avian Power Line Interaction Committee (APLIC 1996) to protect migratory birds, including eagles.

To further the conservation of prairie dog ecosystems we recommend that the Bureau minimize disturbance within prairie dog towns to protect the many species that depend on these unique areas such as burrowing owls, mountain plovers, black-footed ferrets, ferruginous hawks and the prairie dog themselves.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If you have further questions regarding our comments or your responsibilities under the Act, please contact Kathleen Erwin of my staff at the letterhead address or phone (307)772-2374, extension 28.

Enclosures (1)

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

References

Avian Power Line Interaction Committee (APLIC). 1996. Suggested Practices for Raptor Protection on Power Lines - The State of the Art in 1996. Edison Electric Institute and the Raptor Research Foundation. Washington, D.C.