

AUG 19 2014



## United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services  
5353 Yellowstone Road, Suite 308A  
Cheyenne, Wyoming 82009

In Reply Refer To:  
ES-61411/W.06/WY08SL0194

JUN 13 2008

David Hunt, Supervisor  
Land Administration  
Wyoming Game and Fish Department  
5400 Bishop Blvd.  
Cheyenne, WY 82006

Dear Mr. Hunt:

On May 21, 2008, our office received your letter regarding a proposed land trade involving the Wick Wildlife Habitat Management Area. The trade involves two 160-acre parcels of land located in Carbon County near Arlington, Wyoming. The privately-owned and state-owned parcels under consideration for exchange are located at T19N, R79W, Section 31, NE ¼ and T18N, R80W, Section 3, SE ¼, respectively.

The U.S. Fish and Wildlife Service (Service) is providing the following information for use in your analysis. Our comments include information on (1) listed species, (2) migratory birds, (3) wetland and riparian areas, and (4) sensitive species. The Service provides recommendations for protective measures for listed species in accordance with the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Protective measures for migratory birds are provided in accordance with the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703 and the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. 668. Wetlands are afforded protection under Executive Orders 11990 (wetland protection) and 11988 (floodplain management), as well as section 404 of the Clean Water Act. Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act and the Fish and Wildlife Act of 1956, as amended, 70 Stat. 1119; 16 U.S.C. 742a-742j.

In accordance with section 7 of the Act, we have determined that the following threatened, endangered, proposed, or candidate species or critical habitat may potentially occur within the proposed project area. If issuance of the proposed permit may affect a listed species, please contact the Service to discuss consultation requirements.

<b>SPECIES</b>	<b>STATUS</b>	<b>HABITAT</b>
Black-footed ferret ( <i>Mustela nigripes</i> )	Endangered	Prairie dog towns

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Blowout penstemon ( <i>Penstemon haydenii</i> )	Endangered	Sand dunes or blowouts
Ute ladies' -tresses ( <i>Spiranthes diluvialis</i> )	Threatened	Seasonally moist soils and wet meadows of drainages below 7000 feet elevation.

If the proposed action will lead to water depletion (consumptive use) in the Platte river system, impacts to impacts to threatened and endangered species inhabiting the downstream reaches should be included in the evaluation.

**Black-footed ferret:** Black-footed ferrets may be affected if prairie dog towns are impacted. Please be aware that black-footed ferret surveys are no longer recommended in black-tailed prairie dog towns statewide or white-tailed prairie dog towns except those noted in our enclosed February 2, 2004, letter. However, we encourage the protection of prairie dog towns for their value to the prairie ecosystem and the myriad of species that rely on them. We further encourage you to analyze potentially disturbed prairie dog towns for their value to future black-footed ferret reintroduction.

If white-tailed prairie dog towns or complexes greater than 200 acres will be disturbed, surveys for ferrets may be recommended in order to determine if the action will result in an adverse effect to the species. Surveys are recommended even if only a portion of the white-tailed prairie dog town or complex, as identified in our enclosed letter, will be disturbed. According to the *Black-Footed Ferret Survey Guidelines* (USFWS 1989), a prairie dog complex consists of two or more neighboring prairie dog towns less than 7 km (4.3 miles) from each other. If a field check indicates that prairie dog towns may be affected, you should contact this office for guidance on ferret surveys.

**Blowout penstemon:** Blowout penstemon (*Penstemon haydenii*) is a perennial herb with stems less than 12 inches tall. The inflorescence is 2-6 inches long and has 6-10 compact whorls of milky-blue to pale lavender flowers. Blowout penstemon was listed as endangered on October 1 1987. Blowout penstemon is known from multiple populations in western Nebraska (Fertig 2001). The plant's current known range in Wyoming consists of the Ferris dunes area in northwest Carbon County where the plant is restricted to two habitat types: steep, northwest facing slopes of active sand dunes with less than 5 percent vegetative cover; and on north facing sandy slopes, on the lee side of active blowouts with 25-40 percent vegetative cover. Known populations in Wyoming are found between 6680-7440 feet (Fertig 2001). However, recent surveys have indicated that systematic surveys may be warranted in some lower elevations (below 6700 feet) in Wyoming where active sand blowout features occur (BLM 2005, Fertig 2001).

Blowouts are formed as strong winds deposit sands from the windward side of a dune to the leeward side and result in a sparsely vegetated crater-like depression. Associated vegetation includes blowout grass, thickspike wheatgrass, lemon scurfpea, Indian ricegrass and western

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wheatgrass. Threats to the plant occur when sand dunes are removed or overly disturbed by vehicular traffic. Surveys should be conducted from mid-June to early-July when flowering occurs by knowledgeable botanists trained in conducting rare plant surveys. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the blowout penstemon to experts who can provide training/services.

**Ute ladies'-tresses:** Ute ladies'-tresses (*Spiranthes diluvialis*) is a perennial, terrestrial orchid, 8 to 20 inches tall, with white or ivory flowers clustered into a spike arrangement at the top of the stem. *S. diluvialis* typically blooms from late July through August; however, depending on location and climatic conditions, it may bloom in early July or still be in flower as late as early October. *S. diluvialis* is endemic to moist soils near wetland meadows, springs, lakes, and perennial streams where it colonizes early successional point bars or sandy edges. The elevation range of known occurrences is 4,200 to 7,000 feet (although no known populations in Wyoming occur above 5,500 feet) in alluvial substrates along riparian edges, gravel bars, old oxbows, and moist to wet meadows. Soils where *S. diluvialis* have been found typically range from fine silt/sand, to gravels and cobbles, as well as to highly organic and peaty soil types. *S. diluvialis* is not found in heavy or tight clay soils or in extremely saline or alkaline soils. *S. diluvialis* seems intolerant of shade and small scattered groups are found primarily in areas where vegetation is relatively open. Surveys should be conducted by knowledgeable botanists trained in conducting rare plant surveys. *S. diluvialis* is difficult to survey for primarily due to its unpredictability of emergence of flowering parts and subsequent rapid desiccation of specimens. The Service does not maintain a list of "qualified" surveyors but can refer those wishing to become familiar with the orchid to experts who can provide training or services.

**Platte River water depletions:** Water depletions to the Platte River system may affect the Federally listed whooping crane (*Grus americana*), interior least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), pallid sturgeon (*Scaphirhynchus albus*), and western prairie fringed orchid (*Platanthera praeclara*). In addition, depletions may contribute to the destruction or adverse modification of designated critical habitat for the whooping crane. Depletions include evaporative losses and/or consumptive use, often characterized as diversions from the Platte River or its tributaries less return flows. Project elements that could be associated with depletions to the Platte River system include, but are not limited to, ponds (detention/recreation/irrigation storage/stock watering), lakes (recreation/irrigation storage/municipal storage/power generation), reservoirs (recreation/irrigation storage/municipal storage/power generation), created or enhanced wetlands, hydrostatic testing of pipelines, wells, diversion structures, dust abatement, and water treatment facilities. Any actions that may result in a water depletion to the Platte River system should be identified. The document should include: an estimate of the amount and timing of average annual water use (both historic and new uses) and methods of arriving at such estimates; location of where water use or diversion occurs as specifically as possible; if and when the water will be returned to the system; and for what purpose the water is being used. For more information on how to meet the Act's requirements for water-related activities through the Platte River Recovery Implementation Program, please visit our web site at: <http://www.fws.gov/platteriver>.

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**Migratory Birds:** The MBTA, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations, and does not require intent to be proven. Section 703 of the MBTA states, "Unless and except as permitted by regulations ... it shall be unlawful at any time, by any means or in any manner, to ... take, capture, kill, attempt to take, capture, or kill, or possess ... any migratory bird, any part, nest, or eggs of any such bird..." The BGEPA, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests, or eggs, which includes collection, molestation, disturbance, or killing.

Work that could lead to the take of a migratory bird or eagle, their young, eggs, or nests (for example, if you are going to erect new roads, or power lines in the vicinity of a nest), should be coordinated with our office before any actions are taken. Removal or destruction of such nests, or causing abandonment of a nest could constitute violation of one or both of the above statutes. Removal of any active migratory bird nest or nest tree is prohibited. For golden eagles, inactive nest permits are limited to activities involving resource extraction or human health and safety. Mitigation, as determined by the local Service field office, may be required for loss of these nests. No permits will be issued for an active nest of any migratory bird species, unless removal of an active nest is necessary for reasons of human health and safety. Therefore, if nesting migratory birds are present on, or near the project area, timing is a significant consideration and needs to be addressed in project planning.

If nest manipulation is proposed for this project, the project proponent should contact the Service's Migratory Bird Office in Denver at 303-236-8171 to see if a permit can be issued for this project. No nest manipulation is allowed without a permit. If a permit cannot be issued, the project may need to be modified to ensure take of a migratory bird or eagle, their young, eggs or nest will not occur.

**Wetlands:** The functions and values of wetlands are well documented and are especially important in the arid west. Substantial degradation diminishes the effectiveness of wetlands to function as food, cover, and breeding sites for wetland dependent species; sediment transport systems; water retention/storage sites; contaminant sinks; and chemical exchange sites. To ensure the Service has sufficient information to assess project impacts on wetlands, assessments should include:

1. An enumeration of the acreage of wetlands, by type, impacted by the proposed action.
2. A discussion of why wetlands cannot be avoided.
3. A description of the functions and values of the wetlands, including sediment transport, water storage, habitat for aquatic and terrestrial organisms, and contaminant sinks, as well as the potential risks of water removal for these functions and values.
4. Measures that will reduce or eliminate adverse impacts to wetlands such as a mitigation plan to offset unavoidable impacts, protective buffers, seasonal and physical restrictions, maintenance of the natural hydrograph, and development and implementation of a monitoring program to track the effectiveness of mitigation measures.
5. Results of wetland monitoring or management activities in, or adjacent to, the proposed project site.

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6. The anticipated short and long term effects to wetland and riparian areas during and after project completion.

**Greater sage-grouse:** The Service is currently conducting a review to determine if the greater sage-grouse (*Centrocercus urophasianus*) warrants listing. Greater sage-grouse are dependent on sagebrush habitats year-round. Habitat loss and degradation, as well as loss of population connectivity have been identified as important factors contributing to the decline of greater sage-grouse populations rangewide (Braun 1998, Wisdom et al. 2002). Therefore, any activities that result in loss or degradation of sagebrush habitats that are important to this species should be closely evaluated for their impacts to sage-grouse. If important breeding habitat (leks, nesting or brood rearing habitat) is present in the project area, the Service recommends no project-related disturbance March 1 through June 30, annually. Minimization of disturbance during lek activity, nesting, and brood rearing is critical to sage-grouse persistence within these areas. Likewise, if important winter habitats are present, we recommend no project-related disturbance November 15 through March 14.

We recommend you consider greater sage-grouse habitats within the project area, and implement appropriate mitigative measures to minimize potential impacts from the proposed project. The Service recommends surveys and mapping of important greater sage-grouse habitats where local information is not available. The results of these surveys should be used in project planning, to minimize potential impacts to this species. No project activities that may exacerbate habitat loss or degradation should be permitted in important habitats.

We appreciate your efforts to ensure the conservation of Wyoming's fish and wildlife resources. If you have questions regarding this letter or your responsibilities under the Act and/or other authorities or resources described above, please contact Alex Schubert of my office at the letterhead address or phone (307) 772-2374, extension 238.

Sincerely,

  
Brian T. Kelly  
Field Supervisor  
Wyoming Field Office

Attachments (2)

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

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**References**

- Blomquist, F., and B. Heidel. 2002. 2002 Census of Blowout Penstemon (*Penstemon haydenii*), Bear Mountain-Junk Hill Population (EO#002), 25 and 27 June 2002. Report prepared for the Bureau of Land Management, Rawlins, Wyoming and Wyoming Natural Diversity Database, Laramie, Wyoming.
- Braun, C. E. 1998. Sage grouse declines in western North America: What are the problems? Proceedings of the Western Association of Fish and Wildlife Agencies 78:139-156.
- Fertig, W. 2001. 2000 Survey of Blowout Penstemon (*Penstemon haydenii*) in Wyoming. Report prepared for the Wyoming Cooperative Fish and Wildlife Research Unit, US Fish and Wildlife Service, and Wyoming Game and Fish Department by the Wyoming Natural Diversity Database, Laramie, Wyoming.
- United States Bureau of Land Management. 2005. Statewide Programmatic Biological Assessment: Blowout Penstemon (*Penstemon haydenii*). U.S. Bureau of Land Management, Cheyenne, Wyoming. 115 pp. + Appendices.
- United States Fish and Wildlife Service. 1989. Black-footed ferret survey guidelines for compliance with the Endangered Species Act, April 1989. U. S. Fish and Wildlife Service, Denver, Colorado and Albuquerque, New Mexico. 15 pp.
- Wisdom, M. J., B. C. Wales, M. M. Rowland, M. G. Raphael, R. S. Holthausen, T. D. Rich, and V. A. Saab. 2002. Performance of Greater Sage-Grouse models for conservation assessment in the Interior Columbia Basin, USA. Conservation Biology 16:1232-1242.

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Attachment 1



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

**Ecological Services  
4000 Airport Parkway  
Cheyenne, Wyoming 82001**

In Reply Refer To:  
ES-61411/BFF/WY7746

February 2, 2004

Dear Interested Party:

This letter is to inform you that black-footed ferret (*Mustela nigripes*) surveys are no longer necessary in black-tailed prairie dog colonies statewide or in white-tailed prairie dog towns except those noted in the attachment. In response to requests from numerous entities and our own review of the situation regarding ferret surveys, the U.S. Fish and Wildlife Service (Service) and others have been evaluating the potential for a previously unidentified black-footed ferret population to occur in Wyoming and the need for conducting black-footed ferret surveys across the entire state. This issue has been especially pertinent when evaluating various activities for compliance with the Endangered Species Act of 1973 (Act), as amended (16 USC 1531 *et seq.*).

The black-footed ferret was listed as an endangered species in 1967, prior to the Act (under the Endangered Species Preservation Act of 1966). The Act prohibits the take of listed species without proper permits and places an additional requirement on activities funded, authorized or carried out by Federal agencies to ensure that such actions will not jeopardize the continued existence of any listed species. The latter process is known as interagency consultation and is outlined in section 7(a)(2) of the Act (50 C.F.R. §402.13).

The Service developed the 1989 *Black-footed Ferret Survey Guidelines for Compliance with the Endangered Species Act* (Survey Guidelines) to assist with section 7 consultations for ferrets. The Survey Guidelines provide a mechanism to evaluate the possibility of locating existing ferrets in prairie dog colonies by examination of the size, density, and juxtaposition of existing prairie dog colonies. The key points of the strategy are to determine the existence of ferrets or an area's potential for ferret recovery and either may be used in section 7 consultations when determining whether an action may affect the black-footed ferret. The Survey Guidelines can be followed by interested parties (federal agencies and their partners) during the section 7 consultation process to make determinations on whether an activity may adversely affect ferrets. However, an unintended drawback to the Survey Guidelines is that repetitive surveys may be undertaken to evaluate possible impacts to ferrets on prairie dog colonies that have already been searched or that didn't present any realistic opportunities for ferret reintroduction.

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Attachment 1

The Service has been coordinating with the Wyoming Game and Fish Department in reviewing information about the current and historic status of prairie dog towns throughout Wyoming. In addition to the status review, we have also been reviewing the history of black-footed ferret surveys to determine whether the survey guidelines should continue to be applied across the entire state. Through this process, the Service has developed an initial list of blocks of habitat that are not likely to be inhabited by black-footed ferrets. In these areas, take of individual ferrets and effects to a wild population are not an issue and surveys for ferrets are no longer recommended. The term 'block clearance' has often been used to describe this type of approach. This initial list is based largely on the quality of the habitat today, as well as information regarding past population bottlenecks that may have resulted from plague and poisoning events in particular areas and may have led to the loss of ferrets in the area.

Additional information regarding the survey effort on the specific areas not yet block-cleared is currently being reviewed by the Service. Based on this review, the Service will likely add several blocks of habitat to the list in the future. The Service will continue to collect and review information on any remaining areas to determine if they should be added to the list of areas cleared from the survey recommendation. Therefore, prior to conducting surveys, you should coordinate with the Service to determine which specific areas are recommended for surveys. We have attached our initial list of areas cleared from the ferret survey recommendation. We believe this approach is not only biologically defensible, but also allows all parties involved to focus survey effort and resources on those areas where the likelihood of discovering wild ferrets is greatest.

Please note that 'block clearance' must not be interpreted to mean that the area is free of all value to black-footed ferrets. These areas, or blocks, are merely being cleared from the need for ferret surveys. Therefore, this clearance from the survey recommendations reflects only the negligible likelihood of a wild population of ferrets occurring in an area. It does not provide insight into an area's value for survival and recovery of the species through future reintroduction efforts. Nor does this clearance relieve a Federal agency of its responsibility to evaluate the effects of its actions on the survival and recovery of the species. For example, while an action proposed in a cleared area needs no survey and is not likely to result in take of individuals, the action could have an adverse effect upon the value of a prairie dog town as a future reintroduction site and should be evaluated to determine the significance of that effect. Consultation with the Service is appropriate for any agency action resulting in an effect significant enough to diminish a site's value as a future reintroduction site. Additionally, block clearance of an area does not imply that other values of maintaining the integrity of the prairie dog ecosystem are unimportant.

Received in WSFR

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Attachment 1

We appreciate your efforts to conserve listed species. Without the valuable information collected to date in association with black-footed ferret surveys, we would not be able to undertake this effort to focus ferret surveys on the most promising habitat. If you have any questions regarding this letter or your responsibilities under the Act, please contact Mary Jennings of my staff at the letterhead address or phone (307) 772-2374, extension 32.

Sincerely,

*/s/ Brian T. Kelly*

Brian T. Kelly  
Field Supervisor  
Wyoming Field Office

Enclosure (1)

cc: WGFD, Non-Game Coordinator, Lander, WY (B. Oakleaf)  
FWS, BFF Recovery Coordinator, Laramie, WY (M. Lockhart)

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Attachment 2  
February 1, 2004

**Black-footed Ferret Survey Block Clearance List**

The following blocks of black-footed ferret habitat are cleared from the recommendation for ferret surveys:

1. All black-tailed prairie dog towns in Wyoming
2. All white-tailed prairie dog towns in Wyoming EXCEPT those identified in the following table

Complex Name	Townships	Ranges	Complex Name	Townships	Ranges
Baxter Basin	T18, T19, T20	R103, R104	Fifteen Mile	T47-T49 T48	R97, R98 R96 (west half)
Big Piney	T28 T29, T30, T31	R111, R112 R109-R111	Flaming Gorge	T12, T13 T12-T14 T13	R109 R108 R107
Bolton Ranch	T17 T18, T19	R86, R88 R80-R88	Manderson	T47, T48 T49	R90, R91 R91
Carter	T16, T17 T18	R114-R116 R115	Moxa	T15, T16 T17, T18 T19, T20 T21 T22, T23 T24	R112, R113 R111-R113 R111-R114 R110-R113 R111-R113 R112
Comertal Divide	T16 T17 T18 T19 T20	R93-95 R92-95, 98-100, 97-98 R92-96, 98-99 R92-96 R92-95	Pathfinder	T27 T28 T29	R85, R86 R85-R89 R85, R89
Cumberland	T16 T17-T19 T19, T20	R118 R117 R116	Saratoga	T14 T15 T16	R82, R83 R82-R84 R83-R85
Dad	T15, T16 T17	R90-R93 R92, R93	Seminole	T23, T24	R84, R85
Desolation Flats	T13 T14 T15 T16	R93-95 R93-94 R93-94, 96 R93-96	Shamrock Hills	T22, T23 T24, T25 T26	R89, R90 R89 R89, R90