

**APPENDIX H — U.S. FISH AND WILDLIFE SERVICE LETTER
INITIATING FORMAL CONSULTATION**



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

DEC 16 2005

In Reply Refer To:
ES/61411/W.02/WY9913
ES-6-RO-94-F-006(a)-WY113

Memorandum

To: Priscilla Mechem, Field Manager, Bureau of Land Management, Pinedale Field Office, Pinedale, Wyoming

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

Subject: Revised Jonah Infill Drilling Project, Jonah Gas Field Native Habitat Surface Reclamation Project, and Jonah Bird to Opal III Project

In a letter of October 25, 2005, you requested formal consultation for a 67 acre-foot (af) depletion to the Green River resulting from the Jonah Gas Field Native Habitat Surface Reclamation Project, and for an average annual depletion of 1,000 af resulting from the revised proposed action for the Jonah Infill Drilling Project located at T28-29N, R107-109W in Sublette County, Wyoming. Information also was received by our office on November 7, 2005, regarding the use of Colorado River Basin water for the Jonah Bird to Opal III portion of the Jonah Infill Project and the resultant depletion of 16.2 acre-feet. In accordance with section 7 (a)(2) of the Endangered Species Act of 1973 (Act), as amended, 50 CFR §402.14, the U.S. Fish and Wildlife Service (Service) has reviewed the information provided regarding the impacts of the proposed Projects federally listed species.

We understand that the Pinedale Field Office is not the lead field office for the proposed Bird to Opal III portion of the Jonah Infill Drilling Project. Based on information provided, the Service expects to receive a complete Biological Assessment for the Bird to Opal III Project from either the Rock Springs or Kemmerer Field Office. In order to complete section 7 consultation for consumptive water use in the Colorado River Basin without treating it in a piece-meal fashion for different components of the proposed Jonah Infill Project, we are including the depletion associated with Bird to Opal III in this consultation. Consequently, this memo does not address impacts to all federally listed species or other Service trust resources that may be affected by the Bird to Opal III portion of the proposed Project, but addresses only those effects to downstream Colorado River fishes due to the 16.2 af depletion.

The Jonah Infill Drilling Project is an expansion of the existing natural gas development project described in the *Jonah Field II Natural Gas Project Record of Decision for the Environmental*

Impact Statement (EIS) (April 1998) and the *Modified Jonah Field II Natural Gas Project Environmental Assessment* (June 2000). The revised proposed action for the Jonah Infill Project proposes to further increase the number of wells and associated disturbance within the project area. Authorization of the revised proposed action will increase the existing natural gas development by 3,100 new wells and an additional 16,200 acres of disturbance.

The Service provided you with scoping comments in a memo dated January 6, 2004, concerning the revised proposed action for the Jonah Infill Drilling Project, in addition to comments provided in a memo dated May 9, 2003, for the preparation of the original EIS. In our January 6, 2004, memo we expressed concern that an additional 16,200 acres of disturbance could pose a serious threat to an area where wildlife habitat is already severally degraded. Because of the scale of the proposed action and concomitant impacts to local wildlife and habitat, we would like to reiterate several points. Habitat fragmentation, disruption of seasonal migration routes and disruption of breeding activity is caused by access roads, well pads, pipelines, power lines, transmission stations, compressors and increased traffic that accompany natural gas development. The Bureau should give considerable thought to the cumulative impacts that may occur from 3,100 new wells combined with existing development within the Green River Basin. This area is important to many species of wildlife, including listed and proposed species.

To further the conservation of federally-listed species, sensitive species, and their habitats the Service recommends that your decisions regarding increased drilling within the Jonah Gas Field include a thorough analysis of the effects of the proposed action on all wildlife and habitat resources that may be impacted. Therefore, the Service recommends that: (1) the Bureau and/or project proponent conduct a site specific analysis of each well pad site and include stipulations as recommended by the Service, the Bureau, and the Wyoming Game and Fish Department to minimize impacts to wildlife; (2) the project proponent commit to enhance off-site wildlife habitats in-kind at a minimum 1:1 ratio of enhanced habitat acreage to impacted habitat acreage; (3) the Bureau deny permitting of drilling activities in areas where impacts to wildlife are such that no stipulations or mitigation would replace the eliminated habitat; (4) the Bureau monitor truck traffic and human presence to ensure that it is minimized within the field; and (5) the Bureau deny exceptions to stipulations except in the case of an actual emergency. The Service is concerned with the number of exceptions to wildlife protection stipulations on Bureau lands within Wyoming.

Additionally, we strongly recommend that development be phased in over time ensuring that management objectives for wildlife species are met. Additional phases of development should be authorized only when previously disturbed areas have been reclaimed to such a level as to provide suitable habitat for species that are affected. The Service recommends that disturbed areas be reclaimed with native species that persisted prior to disturbance such as sage brush and native grasses. Reclamation with grass species in an area previously dominated by sage brush should not constitute complete and final reclamation.

The Service reminds the Bureau that habitat enhancement projects serving as mitigation also should consider potential effects (beneficial or negative) to listed and proposed species, migratory birds, and petitioned species. The Service further encourages continued research and

monitoring regarding the impacts of natural gas development to wildlife within the Jonah Field. We would appreciate receiving data regarding listed and sensitive species.

Colorado River Fishes

On March 13, 1997, the Service issued a letter of concurrence for a may affect, not likely to adversely affect, determination for Colorado River fishes for consumptive use of water associated with the originally proposed Jonah Field II Natural Gas Development Project as described in the Preliminary Draft EIS. The Service believes that our concurrence was in error since any consumptive use of water to the Colorado River System, whether surface water or groundwater, constitutes an adverse effect to the downstream listed Colorado River fishes and their designated critical habitat: therefore, any such depletion requires formal section 7 consultation for compliance under the Act. Unfortunately, since the Project-related depletion has already occurred without formal section 7 consultation, the Service cannot provide after-the-fact concurrence for this depletion. Please be advised that in the future all such depletions within the Colorado River Basin must undergo formal section 7 consultation to ensure compliance under the Act.

We understand that the revised Jonah Infill Drilling Project as currently proposed will result in a total additional depletion of 12,483 acre-feet (af) over the 12.4 year life of the project: 12,400 af for well-drilling and hydrostatic testing of pipelines; 67 af for Native Habitat Surface Reclamation; and 16.2 af for hydrostatic pipeline testing associated with the Bird to Opal III portion of the Jonah Infill Drilling Project. The average annual depletion associated with all these components of the proposed Project is 1,006.7 af (i.e., 12,483 divided by 12.4 years).

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. Because the estimated depletion of 1,006.7 af is over 100 af, it is considered a "major" depletion according to the Recovery Program for which an individual Biological Opinion (BO) will be issued by the Service's Mountain Prairie Regional Office. We anticipate completion of this BO within the next 30 days.

Greater Sage-grouse

Although the Service has determined that the greater sage-grouse (*Centrocercus urophasianus*) is unwarranted for listing at this time, we continue to have concerns regarding sage-grouse population status, trends and threats, as well as concerns for other sagebrush obligates. As you know, sage-grouse are dependent on sagebrush habitats year-round. 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. We recommend you contact the Wyoming Game and Fish Department to identify important greater sage-grouse habitats within the project area, and implement their recommended mitigative measures to protect these habitats. No project activities that may exacerbate habitat loss or degradation should be permitted in important habitats.

Increased development within the Jonah Gas Field should be carefully evaluated for long-term and cumulative effects on the greater sage-grouse as reclamation will not restore sage brush habitat to pre-development quality which may exacerbate greater sage-grouse declines on either a local or range-wide level.

We also remind the Bureau that they are a signatory, along with the U.S. Forest Service and the U.S. Fish and Wildlife Service, to the 2000 Memorandum of Understanding (MOU) with the Western Association of Fish and Wildlife Agencies (WAFWA) to conserve the greater sage-grouse and its habitat. This MOU outlined the participation of Federal and State wildlife agencies, including the Wyoming Game and Fish Department, in greater sage-grouse conservation, and these commitments should be considered in project planning in sage-grouse habitat. Additionally, unless site-specific information is available, greater sage-grouse habitat should be managed following the guidelines by Connelly *et al.* 2000 (also known as the WAFWA guidelines).

Pygmy Rabbit

Although the Service has concluded that the petition to list the pygmy rabbit (*Brachylagus idahoensis*) does not contain substantial scientific information to warrant a 12-month review, we continue to encourage federal agencies to analyze project areas for potential effects to pygmy rabbits and their habitats. This smallest of the *Leporidae* family occurs in portions of many western states including southwestern Wyoming where occurrence has been confirmed in a few isolated populations in Lincoln, Uinta, Sweetwater, Sublette and Fremont Counties. Pygmy rabbits are sagebrush obligate species, primarily found in dense western big sagebrush (*Artemisia tridentata ssp.*) communities preferably where at least two other species of sagebrush and forbs also occur. Conversion of sagebrush grasslands, habitat fragmentation and overgrazing are considered potential threats to pygmy rabbits. Project planning measures that retain large tracts of suitable habitat and corridors to adjacent habitat will aid in the conservation of this species.

Black-footed Ferret

Based on our review of the 2004 Wildlife Studies for the Jonah Gas Field Development Project (TRC Mariah Associates, Inc.) and the 2004 block-clearance efforts by the Service and the Wyoming Game and Fish Department (WGFD), we are interested in whether the Jonah Field prairie dog towns are associated with the Big Piney prairie dog complex. The Big Piney complex is not block-cleared and is generally located within T28, R111-112 and T29-31, R109-111, just west of the Jonah Field. It is well known that white-tailed prairie dog towns are dynamic and “move” across the landscape. Therefore, we would appreciate information as to the relationship between the Jonah Field prairie dog towns and the Big Piney complex. We recommend mapping the current prairie dog activity along the western edge of the EIS area and determining the distance to the nearest town within the Big Piney complex. This may require mapping of some towns outside of the EIS area but within the eastern portion of the Big Piney complex. The Service’s 1989 Black-footed Ferret Guidelines define a complex as two or more towns less than 7 kilometers (4.3 miles) from each other. In the event that the Jonah Field prairie dog towns are within 4.3 miles of towns associated with the Big Piney complex then they should be considered part of that complex and additional information may be required before a decision

on surveys for black-footed ferrets is made. More importantly, mapping, and information regarding previous surveys and history of plague will assist the Service and the WGFD to block-clear this complex and subsequently concentrate our efforts toward ferret reintroduction.

Wetlands/Riparian Areas

Wetlands and riparian areas perform significant ecological functions which rarely can be mitigated. These functions include: (1) providing habitat for numerous aquatic and terrestrial wildlife species, (2) aiding in the dispersal of floods, (3) improving water quality through retention and assimilation of pollutants from storm water runoff, (4) recharging the aquifer, and (5) supporting a greater variety of wildlife than any other habitat. The Service recommends that well pads, roads and associated development be prohibited within wetland and riparian areas.

Interrelated and Interdependent Effects

If an action on federal lands is in any way related to an action on state and/or private lands then the impacts to listed species on the non-federal lands must be considered interrelated and interdependent effects. Under the Act, the Bureau is obligated to evaluate all potential impacts to listed species from actions on state and private lands within the project area. An action on federal lands should only be authorized when the project proponent is committed to developing and implementing measures to avoid or minimize impacts to listed species on non-federal lands that would occur as a direct or indirect result of the action on federal lands.

The Bureau should notify all lessees and private land owners of their responsibilities to comply with federal and other applicable regulations, regardless of land or mineral ownership (including the Endangered Species Act, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act). If the Bureau, surface owners and lessees agree, these private and state lands can be included in section 7 consultation conducted on federal lands within the project area.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If the scope of the project is changed, or the project is modified, in a manner that you determine may affect a listed species, this office should be contacted to discuss consultation requirements pursuant to section 7(a)(2) of the Act. 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, or Tyler Abbott at extension 23.

cc: BLM, Kemmerer, Field Manager (M. J. Rugwell)
BLM, Rock Springs, Field Manager (M. Holbert)
WGFD, Lander, Non-Game Coordinator (B. Oakleaf)
WGFD, Cheyenne, Statewide Habitat Protection Coordinator (V. Stelter)

References

Connelly J.W., M.A. Schroeder, A.R. Sands, and C.E. Braun. 2000. Guidelines to manage sage grouse populations and their habitats. *Wildlife Society Bulletin* 28(4): 967 - 985.