

#E1-2630



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.18/WY07TA0077

DEC 28 2006

Mark E. Yachmetz, Associate Administrator
Railroad Development
Federal Railroad Administration
1120 Vermont Avenue, N.W.
Washington, D.C. 20590

Dear Mr. Yachmetz:

Thank you for your letter of December 15, 2006, regarding the financing of construction for the Dakota, Minnesota and Eastern Railroad's proposed Powder River Basin Expansion Project (Project) through the Railroad Rehabilitation and Improvement Financing program of the Federal Railroad Administration (FRA). The Project is proposed to cross south-central Minnesota, southwest South Dakota, and east-central Wyoming, and potentially affect the threatened bald eagle (*Haliaeetus leucocephalus*) and the threatened Ute ladies'-tresses (*Spiranthes diluvialis*).

The potential impacts of the Project were previously analyzed by the Surface Transportation Board (STB) in an Environmental Impact Statement (Surface Transportation Board Finance Docket No. 33407). As part of that process and to meet STB's responsibilities under section 7 of the Endangered Species Act of 1973, as amended (Act; 50 CFR §402.13), a Biological Assessment was prepared by the STB. The U.S. Fish and Wildlife Service (Service) responded with a Biological Opinion dated October 26, 2001. In the Biological Opinion, effects to the bald eagle and Ute ladies'-tresses were addressed, as well as effect to the mountain plover (*Charadrius montanus*) which was proposed for listing at the time. Since 2001, the Service has continued coordination with the STB and its consultants, most recently through discussions regarding the current status of the mountain plover, which is no longer a candidate species, and the need to implement terms and conditions for the mountain plover, as identified in our 2001 Biological Opinion.

You have requested confirmation that the section 7 consultation process discussed above satisfies the FRA's consultation responsibilities under the Act for the Project. We agree with your assessment that FRA funding of the project does not change the environmental effects of the Project, which were sufficiently addressed during the above-mentioned consultation and in the resultant Biological Opinion. Additionally, the STB and its consultants have maintained coordination with our office to ensure continued compliance with section 7 of the Act. Therefore, we believe that your responsibilities under section 7 of the Act have been met.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species. If you have further 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 232.

Sincerely,

A handwritten signature in black ink, appearing to read "B. T. Kelly". The signature is fluid and cursive, with the first name "Brian" and last name "Kelly" clearly legible.

Brian T. Kelly
Field Supervisor
Wyoming Field Office

cc: Chief, Endangered Species, FWS, Denver, CO (B. Fahey)
National Section 7 Coordinator, FWS, Arlington, VA (M. Horton)
Section of Environmental Analysis, STB, Washington, D.C. (V. Rutson)