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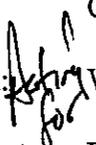
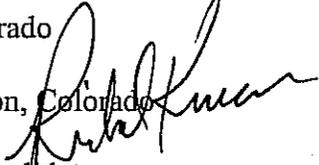
FISH AND WILDLIFE SERVICE
Ecological Services
764 Horizon Drive, Building B
Grand Junction, Colorado 81506-3946

IN REPLY REFER TO:
ES/CO:FWS/GSG
MS 65412 GJ

March 15, 2006

Memorandum

To: Colorado Field Supervisor, Ecological Services, Lakewood, Colorado

From:  Western Colorado Supervisor, Ecological Services, Grand Junction, Colorado 

Subject: Biological Evaluation for the Umbrella Gunnison Sage-grouse Candidate
Conservation Agreement with Assurances

This memorandum transmits the Biological Evaluation for the Umbrella Gunnison Sage-grouse Candidate Conservation Agreement with Assurances document for your review and concurrence.

If you require further assistance, please contact Terry Ireland at the letterhead address or (970) 243-2778, extension 16.

INTRA-SERVICE SECTION 7 BIOLOGICAL EVALUATION
For The
CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES
With The
COLORADO DIVISION OF WILDLIFE
For The
GUNNISON SAGE-GROUSE

Originating Person: Al Pfister, Field Supervisor, Western Colorado Field Office,
Ecological Services, Grand Junction, Colorado
Telephone Number: (970) 243-2778
Date: March 15, 2006

- I. Region of Proposed Action: Mountain-Prairie, Region 6
- II. Service Division: Ecological Services
- III. Federally Listed and Candidate Species in the Action Area

Federally Listed Animals

Bald eagle *Haliaeetus leucocephalus*
Mexican spotted owl *Strix occidentalis lucida*
Southwestern willow flycatcher *Empidonax traillii extimus*
Black-footed ferret *Mustela nigripes*
Canada lynx *Lynx Canadensis*
Bonytail *Gila elegans*
Colorado pikeminnow *Ptychocheilus lucius*
Humpback chub *Gila cypha*
Razorback sucker *Xyrauchen texanus*

Federally Listed Plants

Eriogonum pelinophilum Clay-loving wild-buckwheat
Sclerocactus glaucus Uinta Basin hookless cactus

Federal Candidate Species

Gunnison sage-grouse *Centrocercus minimus*
Yellow-billed cuckoo *Coccyzus americanus*

- IV. Description of Action
Candidate Conservation Agreement with Assurances (CCAA) with the Colorado
Division of Wildlife (CDOW) for Gunnison sage-grouse in western Colorado.

V. Location:
See maps attached to CCAA or Gunnison Sage-grouse Rangewide Conservation Plan (RCP) (Gunnison Sage-grouse Rangewide Steering Committee 2005).

VI. Description of Proposed Action
The proposed action is our issuance of an enhancement of survival permit (Permit) under section 10(a)(1)(A) of the Act to the CDOW to administer and implement a CCAA for conserving the Gunnison sage-grouse in southwestern Colorado. The action will be completed by implementing selected conservation practices described in the RCP on non-Federal lands in 12 counties in southwestern and south central Colorado. The practices which may be conducted include preserving, maintaining, restoring, and/or enhancing habitat. Specific management practices to implement the action may include roller chopping, fire, chemical spraying, or other accepted practices as described in the CCAA and RCP. The conservation practices will occur on those lands identified in the RCP as either 'occupied', 'vacant/unknown,' or 'potentially suitable.' Individual conservation measures may be conducted within portions of Conejos, Costilla, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montezuma, Montrose, Ouray, Saguache and San Miguel counties, Colorado (see maps attached to CCAA or in RCP).

In exchange for the implementation of these conservation measures, the Service proposes to provide individual participating non-Federal landowners assurances through a Certificate of Inclusion (CI) that no additional conservation measures nor additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the CI, will be required on the covered lands should the Gunnison sage-grouse become listed as a threatened or endangered species in the future. Unless otherwise stated, these assurances will be authorized with the issuance of a Permit under section 10(a)(1)(A) of the Endangered Species Act.

Covered Lands

The lands covered under the proposed action are portions of non-Federal lands located in the above named counties. According to the RCP, the Gunnison sage grouse is currently believed to occupy about 924,000 acres of both public and private lands in southwestern Colorado. Another 200,000 acres are classified as 'vacant/unknown,' and 700,000 acres are classified as 'potentially suitable habitat.' Private lands are estimated to make up about 43 percent of all of these lands with another 2 percent owned by the Colorado Division of Wildlife and 1 percent owned by the State of Colorado (State Land Board school sections). The survival and recovery of the species is therefore closely associated with the current and future land uses occurring on the non-Federal lands. The CI required for each individual landowner will describe the parcel of land that is enrolled in the program. Legal descriptions will be used to describe the boundary of the lands proposed for conservation practices, as the boundary of the enrolled lands may be smaller than the entire owned parcel. It is not possible at this time to specifically describe each non-Federal land parcel covered by the proposed action, or the total acres that may be

enrolled in the CCAA program. The actual number of acres and landowners enrolled in the program will be entirely dependent on the popularity of the program among the non-Federal landowners, and the funding available to the CDOW and the Service for program implementation. As of the signing of this BE, 72 landowners covering approximately 102,000 acres have expressed an interest in becoming enrolled under the CCAA.

The specific management practices that will be implemented on each parcel will be those recommended in the RCP, as discussed above. The CI required for each participating landowner will describe which conservation measures will be conducted on the enrolled property, the frequency of their application, who will do the work, and other pertinent details.

The CCAA is consistent with the U.S. Fish and Wildlife Service's "Candidate Conservation Agreement with Assurances Final Policy" (64 Federal Register 32726). This policy encourages the implementation of conservation measures for species that have not been listed under the Endangered Species Act, but warrant agency concern. The CCAA identifies obligations of the parties, including participating landowners. The duration of the CCAA will be 20 years from its date of signature by the Service and the CDOW.

VII. Determination of Effects

The determination of effects is based on whether the species is likely to occur in those areas where conservation measures may be implemented, and the influence the individual conservation measures may have on the species or its habitat.

Gunnison Sage-Grouse

We have concluded that the overall result of the proposed action will be beneficial to the Gunnison sage-grouse (currently a candidate species), but that the agreed upon and routine agricultural practices or other management that will continue on some enrolled lands may result in the incidental taking of Gunnison sage-grouse. As a result of the anticipated incidental take, we conclude that management actions may affect, and are likely to adversely affect the species. A conference opinion is therefore required to fully assess the degree of impact to the species, and to authorize a future level of incidental take.

Bald Eagle

The bald eagle is a nesting and wintering resident throughout the project area boundary. Nesting bald eagle distribution and productivity now exceeds recovery goals for Colorado, and wintering eagles are commonly found on numerous streams and other water bodies within the project area. Nesting bald eagles are typically found in large trees in or adjacent to riparian zones. Wintering eagles commonly forage and roost in riparian zones, and also use large trees as daytime perches or nocturnal roosts. Bald eagles also commonly forage along streams and lakes, but may also forage in uplands long distances from water bodies or riparian zones. As described above, it is possible that some conservation practices will be conducted

within riparian zones or adjacent upland sites. However, none of the practices will remove any known or potential perching or roosting trees, nor will any of the practices have more than an insignificant impact on the availability of bald eagle prey on adjacent upland foraging areas. Therefore, we conclude that the proposed action may affect, but is not likely to adversely affect bald eagles due to insignificant or beneficial impacts.

Mexican Spotted Owl

The Mexican spotted owl is a resident of deep canyon habitat typically vegetated by coniferous and/or deciduous tree and shrub species. Suitable nesting habitat is usually steeply sided and densely vegetated. Owls may forage on canyon rims adjacent to nesting sites but no conservation practices will occur in habitat that would be suitable for owl nesting, nor are there any known owl nest locations near Gunnison sage-grouse habitat in the project area. It's possible that Mexican spotted owls could occupy canyons adjacent to the project area at some point but even if they do we conclude that the proposed action may affect, but is not likely to adversely affect, the Mexican spotted owl due to insignificant impacts.

Southwestern Willow Flycatcher

The flycatcher is a riparian obligate species confined to dense stands of willow or other shrubs that provide the required vegetative structure and composition required for nesting, brood rearing, and fledging of young. The flycatcher's range in Colorado includes counties in the San Juan and Rio Grande River basins. Some of the conservation practices may occur within riparian habitats; however, all practices that are implemented will improve the structure and composition of riparian vegetation to promote brood rearing conditions for Gunnison sage grouse. None of the actions will have detrimental impacts, or impacts that would rise to more than an insignificant or discountable level, to either the shrub overstory or the grass/forb understory required for successful nesting by flycatchers. All practices that are conducted within riparian habitats that may be occupied by flycatchers will only occur outside of the flycatcher nesting season. Because the proposed action may have a beneficial impact to flycatcher habitat, we therefore conclude that the action may affect, but is not likely to adversely affect, the southwestern willow flycatcher.

Black-Footed Ferret

The black-footed ferret is an obligate resident of prairie dog colonies (*Cynomys* spp.), with its entire life cycle dependent on the existence of sufficient, active, prairie dog colonies. While prairie dogs are commonly found throughout the project area, there are no current records of black-footed ferrets occupying any of the remaining colonies, plus there are few colonies that would even be capable of supporting black-footed ferrets. In the rare event that ferrets were to occur in some of the remaining colonies in the project area, none of the conservation practices will have a measurable impact on prairie dog abundance or distribution. We therefore conclude that the proposed action may affect, but is not likely to adversely affect the black-footed ferret.

Canada Lynx

Canada lynx are typically confined to forested and shrub habitats above 8,000 feet elevation. Other vegetative communities below this elevation can provide important migration corridors and therefore are important in linking the occupied sites, and providing effective means for dispersal of lynx throughout their occupied and potentially suitable range. Lynx currently occupy sites within the range of the proposed action. However, none of the conservation practices will have a detrimental impact to any forest habitats likely to be inhabited by lynx. Some conservation practices occurring in riparian zones or in linkage areas could improve conditions for migrating lynx by improving prey habitat or prey availability. We therefore conclude that the proposed action may affect, but is not likely to adversely affect the Canada lynx due to beneficial impacts.

Federally Listed Fish

Within the project area, the federally listed fish and their critical habitat are confined to the Colorado River, San Juan River, and the Gunnison River below its confluence with the Uncompahgre River. There are many tributaries to these rivers within the project area, but none are occupied by the species. All of the conservation practices that will be implemented will occur on terrestrial or riparian habitats. None of the actions will influence tributary stream flows or annual hydrographs, or result in any depletion of water from any tributary stream, or the Colorado or Gunnison rivers. Nor will any of the practices impact any of the designated critical habitat. Therefore, we conclude that the proposed action will have no effect to any of the federally listed fish species.

Federally Listed Plants

It is important to distinguish the project area (currently occupied, vacant/unknown, and potentially suitable habitat) from the entire historic range reported in the RCP, because the Uinta Basin hookless cactus and the clay-loving wild-buckwheat as well as other listed or candidate plants do occur or may have occurred within the larger, historic range, boundary. However, the cactus and buckwheat do not occur within the project area. We therefore conclude that the proposed action will have no effect to the federally listed plant species.

Other Federal Candidate Species

Yellow-Billed Cuckoo

The yellow-billed cuckoo is an obligate of riparian forested habitat. As described above, none of the practices will have an adverse effect to riparian tree species that would provide suitable habitat for nesting or foraging yellow-billed cuckoos. Some beneficial effect could result in riparian zones by improving conditions for insects, which are a key prey item for cuckoos. We therefore conclude that the proposed action is not likely to jeopardize the yellow-billed cuckoo due to insignificant or beneficial impacts.

VIII. Effect Determination and Response Requested:

We have concluded that the proposed action 'may affect, and is likely to adversely affect' the Gunnison sage-grouse, a Federal candidate species. A conference opinion is therefore required to assess the degree of impact to this species, and to authorize anticipated incidental take. We have concluded that the proposed action will either have 'no effect', or 'may affect, but is not likely to adversely affect' federally listed species and is not likely to jeopardize the yellow-billed cuckoo, a candidate species, that may occur in the proposed action area. Therefore, we request your concurrence with these determinations.

Allan R. Pfister

Allan R. Pfister
Western Colorado Supervisor
Grand Junction, Colorado

March 15, 2006

Date

IX. Reviewing ESO Evaluation

- a. 'May affect, and is likely to adversely affect' Gunnison sage grouse:
concurrence _____ nonconcurrence _____
- b. Conference opinion required
concurrence _____ nonconcurrence _____
- c. 'No effect' to federally listed fish and federally listed plants:
concurrence _____ nonconcurrence _____
- d. 'May affect, but is not likely to adversely affect' the bald eagle, Mexican spotted owl, southwestern willow flycatcher, black-footed ferret and Canada lynx:
concurrence _____ nonconcurrence _____
- e. Is not likely to jeopardize the yellow-billed cuckoo:
concurrence _____ nonconcurrence _____

Susan L. Linner
Colorado Field Supervisor
Lakewood, Colorado

Date

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We have concluded that the proposed action 'may affect, and is likely to adversely affect' the Gunnison sage-grouse, a Federal candidate species. A conference opinion is therefore required to assess the degree of impact to this species, and to authorize anticipated incidental take. We have concluded that the proposed action will either have 'no effect', or 'may affect, but is not likely to adversely affect' federally listed species and is not likely to jeopardize the yellow-billed cuckoo, a candidate species, that may occur in the proposed action area. Therefore, we request your concurrence with these determinations.

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concurrence _____ nonconcurrence _____

Susan E. Linner

Susan E. Linner
Colorado Field Supervisor
Lakewood, Colorado

April 7, 2006
Date