

Exhibit 4B
Biological Opinion
U.S. Fish and Wildlife Service



United States Department of the Interior
FISH AND WILDLIFE SERVICE
Ecological Services
764 Horizon Drive, Building B
Grand Junction, Colorado 81506-3946

IN REPLY REFER TO:
ES/CO:FS/RGNF
MS 65412

December 10, 2002

Dale Gomez, Wildlife Biologist
Rio Grande National Forest
1803 West Highway 160
Monte Vista, Colorado 81144

Dear Mr. Gomez:

The Fish and Wildlife Service has received your October 25, 2002, correspondence requesting concurrence for your biological assessment for the Rio Oxbow Land Exchange Project. Federally listed species that may be affected by the land exchange are the bald eagle (*Haliaeetus leucocephalus*) and the Canada lynx (*Lynx canadensis*). Other federally listed species evaluated but considered not to be affected by your proposed project are the Mexican spotted owl (*Strix occidentalis lucida*), black-footed ferret (*Mustela nigripes*), southwestern willow flycatcher (*Empidonax traillii extimus*), Uncompahgre fritillary butterfly (*Boloria acrocnema*), *Astragalus humillimus* (Mancos milk-vetch), *Eriogonum pelinophilum* (clay-loving wild-buckwheat), *Pediocactus knowltonii* (Knowlton's cactus) and *Spiranthes diluvialis* (Ute ladies'-tresses).

Although Federal candidates, such as the boreal toad (*Bufo boreas boreas*), do not receive protection under the Endangered Species Act, the Service appreciates considerations in minimizing possible impacts. As part of the land exchange and to minimize impacts to the boreal toad, the Federal land transferred to non-Federal ownership should have prohibitions on the development and/or disturbance of wetland areas.

The Service concurs with your determinations of "no effect" for the Mexican spotted owl, black-footed ferret, southwestern willow flycatcher, Uncompahgre fritillary butterfly, *Astragalus humillimus*, *Eriogonum pelinophilum*, *Pediocactus knowltonii* and *Spiranthes*

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diluvialis. The determination of "no effect" is based on the lack of suitable habitat discussed in your biological assessment.

We also concur with the determination of "may affect, not likely to adversely affect" the bald eagle and Canada lynx. The following discussion justifies our concurrence. Federal land parcels N1, N3, L1, L2, L3, and L4 do not have suitable habitat for either bald eagle or Canada lynx. Federal land parcels that have suitable bald eagle habitat includes N2, N4, N5, and N6.

However, covenants associated with the Rio Oxbow Land Exchange will not allow removal of forest cover or land development within floodplains or riparian habitats. These covenants should prevent any loss of bald eagle habitat.

Federal land parcels N4, N5, N6, and L5 contain 222 acres of suitable lynx habitat. Non-Federal lands gained in the exchange will total 175 acres. The net loss of lynx habitat will be 47 acres. The Lynx Analysis Unit that will be affected by the land exchange is the Hogback LAU. The net loss of 47 acres of lynx habitat will not exceed the 30 percent unsuitable criteria for this LAU. Mitigation through land covenants will prohibit any timber harvesting and/or land development within lynx habitat. Additional justification for our concurrence is the land exchange will create more contiguous lynx habitat by absorbing into Federal jurisdiction these non-Federal inholdings.

If the Service can be of further assistance, please contact John Kleopfer at the letterhead address or (970) 245-3920, extension 39.

Sincerely,



Allan R. Pfister
Assistant Colorado Field Supervisor

Pc: FWS/ES, Lakewood

JKleopfer:FSRGNFRioOxbowLandExchangeLtr. wpd: 121002