



United States Department of the Interior



FISH AND WILDLIFE SERVICE
334 Parsley Boulevard
Cheyenne, Wyoming 82007

In Reply Refer to:
06E13000-2020-CPA-0016a

April 7, 2021

Mr. Mike Thomas
Director of Mining and Safety
Black Hills Bentonite
55 Salt Creek Highway
Casper, Wyoming 82604

Dear Mr. Thomas:

Thank you for your correspondence of April 1, 2021, received in our office on the same day, regarding Black Hills Bentonite's proposed new mining project in the Keyhole Mine Permit Area (Project). This mine will be located at T50N, R66W, Sec. 16 in Crook County, Wyoming. The Project will remove bentonite from 68 acres with an additional 72 acres potentially being disturbed as a result of mine-related activities.

Your letter provided sufficient information for the U.S. Fish and Wildlife Service (Service) to evaluate the effects of this Project to federally listed species. Based on the information provided, it is unlikely that the proposed work will adversely affect any threatened or endangered species. You may consider this Project, as proposed, to be in compliance with the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531 *et seq.*

This Project should be re-analyzed if new information reveals effects of the action that may affect listed species or designated or proposed critical habitat in a manner or to an extent not considered in this letter; if the action is subsequently modified in a manner that causes an effect to a listed or proposed species or designated or proposed critical habitat that was not considered in this letter; and/or if a new species is listed or critical habitat is designated that may be affected by this project.

The Service's Wyoming Ecological Services Field Office works to raise public awareness about the possible occurrence of birds in proposed project areas and the risk of killing or injuring birds or destroying active nests. Our office provides recommendations to minimize the likelihood that injury or death will occur. We encourage you to coordinate with our office before conducting actions that could lead to the death or injury of a migratory bird, their young, eggs, or the abandonment or destruction of active nests (e.g., construction or other activity in the vicinity of an active nest). The 2020 Wildlife Baseline Report indicated that a red-tailed hawk (*Buteo jamaicensis*) nest and an

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INTERIOR REGION 5
MISSOURI BASIN

INTERIOR REGION 7
UPPER COLORADO RIVER BASIN

KANSAS, MONTANA*, NEBRASKA, NORTH DAKOTA,
SOUTH DAKOTA

COLORADO, NEW MEXICO, UTAH, WYOMING

DEQ
Sheridan

*PRIM

DEQ Exhibit 8

inactive osprey (*Pandion haliaetus*) nest on a nesting platform were located within the Service's recommended buffer of 0.25-mile to disturbance in the Project area. Both species are protected under the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703. The MBTA protects migratory birds, eggs and nests from possession, sale, purchase, barter, transport, import, export, and take. The regulatory definition of take, defined in 50 CFR 10.12, means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to hunt, shoot, wound, kill, trap, capture, or collect a migratory bird. Activities that result in the intentional, unpermitted take of migratory birds or their eggs are illegal and fully prosecutable under the MBTA. Removing or destroying active nests (i.e., nests that contain eggs or young) or causing abandonment of an active nest with intent could constitute a violation of the MBTA. Therefore, if nesting migratory birds are present on or near a project area, project timing is an important consideration during project planning. For additional information concerning nesting birds and protections under the MBTA, please see the Service's Destruction and Relocation of Migratory Bird Nest Contents memorandum at: <https://www.fws.gov/policy/m0407.pdf>, dated June 14, 2018.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If you have questions regarding this letter or your responsibilities under the ESA and/or other authorities or resources described above, please contact Kim Dickerson of my office at the letterhead address or by phone (307) 757-3710.

Sincerely,

JOHN
HUGHES

Digitally signed
by JOHN
HUGHES
Date: 2021.04.07
15:02:15 -06'00'

for

Tyler A. Abbott
Field Supervisor
Wyoming Field Office

cc: WGFD, Statewide Habitat Protection Program, Cheyenne, WY
(wgfd.hpp@wyo.gov)

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