



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Ecological Services  
Colorado Field Office  
P.O. Box 25486, DFC (65412)  
Denver, Colorado 80225-0486

IN REPLY REFER TO:  
ES/CO: T&E/Species List  
TAILS: 65412-2009-SL-0332

**APR 16 2009**

Jess Ortiz  
City and County of Denver  
201 West Colfax Avenue  
Denver, Colorado 80202

Dear Jess Ortiz:

Based on the authority conferred to the U.S. Fish and Wildlife Service (Service) by the Fish and Wildlife Act of 1956 (916 U.S.C. 742(a)-754); Fish and Wildlife Coordination Act (FWCA - 16 U.S.C. 661-667(e)); National Environmental Policy Act of 1969 (NEPA - 42 U.S.C. 4321-4347); Department of Transportation Act (49 U.S.C. 1653(f)), and; Endangered Species Act of 1973, as amended (ESA - 50 CFR §402.14), as well as multiple Executive Orders, policies and guidelines, and interrelated statutes to ensure the conservation and enhancement of fish and wildlife resources (e.g., Migratory Bird Treaty Act (MBTA - 16 U.S.C. 703), and Bald and Golden Eagle Protection Act (BGEPA - 16 U.S.C. 668)), the Service reviewed your April 3, 2009, request for information on the Service's trust resources in the vicinity of the proposed **I-70/Central Park Boulevard Interchange, City and County of Denver, Colorado**. The proposed project extends along I-70 and I-270 from Quebec Street to Havana Street, bisecting the Stapleton Redevelopment area.

## Threatened and Endangered Species

Following is a list of Federal endangered, threatened, proposed and candidate species for the City and County of Denver, which may be used as a basis for determining additional listed species potentially present in the project area. While other species could occur at or visit the project area, endangered or threatened species most likely to be affected include:

Birds:           \*Least tern, interior population (*Sternula antillarum*), Endangered  
                  \*Piping plover (*Charadrius melodus*), Threatened  
                  \*Whooping crane (*Grus americana*), Endangered

Fishes:           \*Pallid sturgeon (*Scaphirhynchus albus*), Endangered

Plants:           \*Ute ladies'-tresses orchid (*Spiranthes diluvialis*), Threatened  
                  \*Western prairie-fringed orchid (*Platanthera praeclara*), Threatened

\* Since 1978, the Service has consistently taken the position in its section 7 consultations that Federal agency actions resulting in existing or new water depletions to the Platte River system may affect these species as well as designated critical habitat for the whooping crane in the central Platte River in Nebraska. Depletions include evaporative losses and/or consumptive use less return flows. Project elements that could be associated with depletions to the Platte River system include, but are not limited to, ponds (detention/recreation/irrigation storage), lakes (recreation/ irrigation storage/municipal storage/power generation), reservoirs (recreation/irrigation storage/municipal storage/power generation), pipelines, and water treatment facilities, dust control, and compaction.

The Service also is interested in the protection of species which are candidates for official listing as threatened or endangered (Federal Register, Vol. 61, No. 40, February 28, 1996). While these species presently have no legal protection under the Act, it is within the spirit of this Act to consider project impacts to potentially sensitive candidate species. It is the intention of the Service to protect these species before human-related activities adversely impact their habitat to a degree that they would need to be listed and, therefore, protected under the Act. Additionally, we wish to make you aware of the presence of Federal candidates should any be proposed or listed prior to the time that all Federal actions related to the project are completed. If any candidate species will be unavoidably impacted, appropriate mitigation should be proposed and discussed with this office.

There are no Candidate species in the project area at this time.

### Migratory Birds

Under the MBTA construction activities in grassland, wetland, stream, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the take of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird nesting activity in eastern Colorado occurs during the period of April 1 to August 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys should be conducted during the nesting season. In some cases, such as on bridges or other similar structures, nesting can be prevented until construction is complete. It is further recommended that the results of field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) for potential review by the Service (if requested) until such time as construction on the proposed project has been completed. The Service's Colorado

Field Office should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests that cannot be avoided by the planned construction activities. Adherence to these guidelines will help avoid the unnecessary take of migratory birds and the possible need for law enforcement action.

### Wetlands

FWCA provides the basic authority for the Service's involvement in evaluating impacts to fish and wildlife "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified **for any purpose whatever...**by any department or agency of the United States, or by any public or private agency under Federal permit or license," including water crossings and wetland impacts, whether or not those wetlands are under the jurisdiction of the U.S. Army Corps of Engineers [16 U.S.C. 661(1), emphasis added]. It requires that fish and wildlife resources "receive equal consideration...to other project features...through the effectual and harmonious planning, development, maintenance, and coordination of wildlife conservation and rehabilitation," and requires Federal agencies to consult with the Service during the planning process to help "prevent the loss of or damage to such resources as well as providing for the development and improvement thereof" (16 U.S.C. 661 *et seq*). Full consideration is to be given to Service recommendations.

In addition to information on our trust resources, you specifically requested information regarding avoidance and minimization measures for the black-tailed prairie dog, *Cynomys ludovicianus*. Because this species is not listed under the ESA, we have no jurisdiction, but recommend that you continue to work with CDOT to implement their prairie dog protection policy.

If the Service can be of further assistance, please contact Alison Deans Michael of my staff at 303 236-4758.

Sincerely,



for Susan C. Linner  
Colorado Field Supervisor

pc: CDOT, HQ (Jeff Peterson)  
CDOT, R6 (Jon Chesser)  
Michael