



Project: Southern Colorado Rail Park
Date: March 4, 2024
To:
From: Sirena Brownlee, Senior Scientist/Project Manager, HDR, Inc.
Subject: Wildlife and Waters of the U.S. Technical Memorandum

Introduction

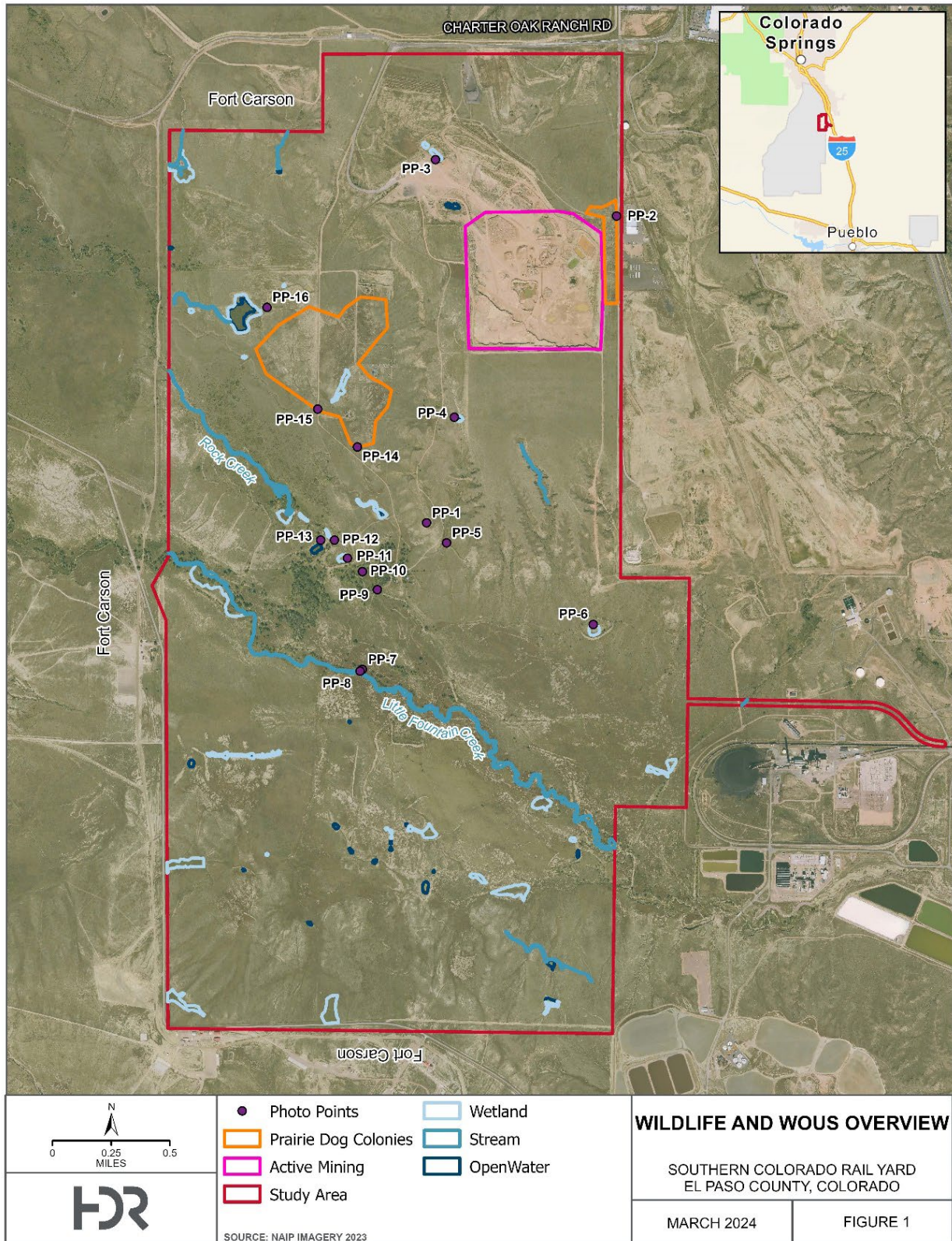
This memorandum presents the findings of a review of federal- and state- listed species and wetlands and waters of the U.S. (WOUS) conducted by HDR, Inc. for the proposed Southern Colorado Rail Park (Project) near the incorporated limits of Fountain, Colorado. The site is located south of the city of Fountain and west of Interstate 25 in El Paso County, Colorado. The property is within Sections 18, 19, 20 and 30, Township 16 South, Range 65 West. The site is bounded by Interstate 25, Union Pacific Railroad, and Burlington Northern Santa Fe Railroad on the east, Charter Oak Ranch Road on the north, Fort Carson Military Base on the west, Fort Carson and the Ray Nixon Power Plant on the south (Figure 1). The land is owned primarily by Edward C. Levy Company, with smaller relevant properties being owned by five private lot owners, the City of Fountain, and Kiewit Construction. Overall, the project site encompasses 3,875 acres.

The April 2013 City of Fountain Comprehensive Plan Update identifies the properties land use classification as Business Park/Planned Industrial. Current land use is primarily gravel mining operations and agriculture, as well as a few residential lots. Some limited grazing occurs in the project area.

Methods and Site Visit

A site visit was conducted on September 11, 2018, by Sirena Brownlee, senior scientist with HDR. The purpose of site visit was to assess the project area for the presence and suitability of potential habitat for federal- and state- listed species, and determine if wetlands and WOUS are present in the project area. A follow up site visit was conducted on February 23, 2024 by Sirena Brownlee and Travis Coats, with HDR. The purpose of the 2024 site visit was to conduct a new survey for raptor nests in the project area, confirm wetland and stream data from desktop delineation, and compile a photo log of sensitive habitats in the project area.

Figure 1. Wildlife and Waters of the U.S. Overview



Prior to conducting the site visit, HDR conducted an updated desktop review of available sources to identify potential for wetlands and federal- and state- listed species with the potential to occur in the project area. The desktop review information was confirmed and IPaC species list updated on February 13, 2024. The following information sources were reviewed:

- USFWS IPaC interactive program which lists federal species potentially found in El Paso County, Colorado (USFWS 2024).
- Colorado Natural Heritage Program (CNHP) spatial data (CNHP 2024).
- eBird for recent sightings of federally listed birds in the project area (Sullivan et al. 2009).
- Colorado Breeding Bird Atlas data (Wickersham 2016).
- Colorado Parks and Wildlife Species Activity Data (CPW 2024a).
- Colorado sensitive, threatened, and endangered species as identified by the Colorado Parks and Wildlife (CPW 2024b).
- Natural Resources Conservation Service soil survey data and National Wetlands Inventory (NWI) data, to identify potential locations for aquatic resources, including Waters of the U.S.

This report provides summaries of the regulations, data reviewed, wildlife species of interest potentially occurring at the project site, and recommendations.

Project Area Habitat Description

The project area topography slopes down in a southeast direction at approximately 2 percent slope to Little Fountain Creek. Little Fountain Creek flows in a southeast direction, with the southwest portion of the site sloping into the creek at approximately 5 percent slope in a northeast direction. The southwest corner of the project site sits at 5,620 feet of elevation, and slopes down to Little Fountain Creek at approximately 5,500 feet of elevation. The northwest corner of the site sits at approximately 5,740 feet of elevation, sloping to the creek. The northeast portion of the site sits on a flatter area at 5,680 feet of elevation. Rock Creek is a smaller stream and crosses into the site from the northwest, but does not have a published floodplain. There are steeply sloping areas adjacent to Little Fountain Creek and other dry bed areas to the east of the project site that would be too encumbered for development and would likely be utilized as approximately 500 acres of open space.

The project area is located within the Southern Rocky Mountains and Central Shortgrass Prairie ecoregions (Chapman et al. 2006). The Central Shortgrass Prairie ecoregion is characterized by rolling plains and tablelands dissected by streams, canyons, badlands, and buttes and dominated by shortgrass, mixed-grass, and sandsage prairie. Small patches of remnant tallgrass prairie occur along the base of the foothills and in other areas where the soils and moisture regime are appropriate.

Vegetation in the project area consists of short grass prairie, disturbed vegetation around developed areas, and riparian habitat. The dominant plant species in the short grass prairie are

smooth brome (*Bromis inermis*), crested wheatgrass (*Agropyron cristatum*), soapweed yucca (*Yucca glauca*), cane cholla (*Cylindropuntia imbricata*), (blue grama (*Bouteloua gracilis*), galleta (*Pleuraphis jamesii*) and western wheatgrass (*Pascopyrum smithii*). There is a diverse forb component and occasional shrubs including saltbush (*Atriplex canescens*), three-leaf sumac (*Rhus trilobata*), rabbitbrush (*Chrysothamnus nauseosus*), and yucca (*Yucca glauca*). Other common herbaceous species include common sunflower (*Helianthus annuus*), fringed sage (*Artemisia frigida*), plains prickly pear (*Opuntia polyacantha*), Indian ricegrass (*Achnatherum hymenoides*), curlycup gumweed (*Grindelia squarrosa*), and broom snakeweed (*Gutierrezia sarothrae*).

Riparian habitat is located along Little Fountain Creek and other small drainages in the project area and included plains cottonwood (*Populus deltoides*), Siberian elm (*Ulmus pumila*), green ash (*Fraxinus pennsylvanica*), reed canary grass (*Phalaris arundinacea*), saltcedar (*Tamarix* spp.), cattail (*Typha* spp.), and bulrush (*Schoenoplectus* spp.).

Vegetation in disturbed/developed areas consists of smooth brome, cheat grass (*Bromus tectorum*), thistle (*Cirsium* spp.), common mullein (*Verbascum thapsus*), rough cocklebur (*Xanthium strumarium*), diffuse knapweed (*Centaurea diffusa*) and field bindweed (*Convolvulus arvensis*).

Wildlife observed during the site visit include pronghorn antelope (*Antilocapra americana*), elk (*Cervus elaphus*), red-tail hawk (*Buteo jamaicensis*), sharp-shinned hawk (*Accipiter striatus*), black-billed magpie (*Pica hudsonia*), black-capped chickadee (*Poecile atricapillus*), and black-tailed prairie dog (*Cynomys ludovicianus*). Several large herds of elk (approximately 350 individuals) were observed in the project area during the February 2024 site visit. Several active black-tailed prairie dog colonies are located on the north end of the project area adjacent to existing roads and transmission lines (Figure 1).

There are several areas with mature trees that provide nesting habitat for migratory birds and raptors within or immediately adjacent to the project area. No raptor nests were documented in the project area during the 2024 site visit and no raptor nests are mapped within 0.50 miles of the project area based on CPW raptor nest data (CPW 2024a). Two inactive, black-billed magpie nests were documented within the project area in smaller Siberian elm trees. The grasslands provide good habitat for raptors and the presence of prairie dogs in the project area provides a source of prey for raptors.

The project area is mapped as elk, mule deer (*Odocoileus hemionus*) and pronghorn overall range by the CPW (CPW 2024b). The project area has been identified as a winter range, winter concentration area, migration corridor and an important calf production area for elk. Elk winter concentration areas are defined as that part of the winter range where animal densities are at least 200% greater than the surrounding winter range density during the same period used to define winter range in the average five winters out of ten. CPW recommends a timing limitation on construction activities from December 1 to April 30 to avoid this sensitive period.

Photos of the project area as indicated on Figure 1 are shown in Appendix A.

Applicable Federal and State Regulations

This report has been prepared to ensure impacts to federal-, state-listed, and sensitive species are determined in accordance with the following federal and state regulations:

- **Endangered Species Act.** The Endangered Species Act is administered by the U.S. Fish and Wildlife Service (USFWS) and protects plant and wildlife species threatened with extinction.
- **Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.** The USFWS administers these acts that protect migratory bird nesting habitat and active migratory bird and eagle nests.
- **Colorado Non-game, Endangered, and Threatened Species Conservation Act.** Colorado Parks and Wildlife (CPW) is responsible for listing species of concern, threatened, and endangered within the state. This act provides some protection for state-listed wildlife.
- **Section 404 of the Clean Water Act.** Waters of the U.S. including wetlands are regulated under Section 404 of the Clean Water Act by the U.S. Army Corps of Engineers.

Federal-and State-Listed Species

Based on the USFWS online IPaC System (Appendix B), there are six federally listed threatened or endangered species and one candidate species with the potential to occur in the project vicinity (USFWS 2024). No critical habitat for any federally listed species occurs in the project area.

In addition to federally listed species and migratory birds, the CPW lists 74 species of amphibians, birds, fish, mammals, reptiles, and mollusks as endangered, threatened, or of special concern within the state of Colorado (CPW 2024b). The majority of these species are not expected to occur in the project area because it is outside of their range and/or appropriate habitat is not present. Table 1 lists the federal and state-listed species as well as migratory birds that have the potential to occur within the project area and their associated habitat.

Table 1. Federal and State-Listed Species and their Potential to occur the in Project Area

Species	Status ¹	Habitat	Potential for Occurrence in Project Area
Birds			
Eastern black rail (<i>Laterallus jamaicensis</i>)	FT	Requires dense overhead cover and are primarily associated with herbaceous, persistent, emergent wetland plants	Unlikely to occur. No suitable habitat in project area and outside known range.
Piping plover* (<i>Charadrius melodus</i>)	FT, ST	Wetlands, lakeshores, and marshes. Nesting habitat is along reservoirs, lakes and rivers with bare sandy/pebbly areas with sparse vegetation.	Unlikely to occur. No suitable habitat in study area and outside known range. This species is included because it occurs in the Platte River system.
Bald eagle (<i>Haliaeetus leucocephalus</i>)	SC	Habitat includes reservoirs and along major rivers	May occur. No known nesting sites or habitat in

Table 1. Federal and State-Listed Species and their Potential to occur the in Project Area

Species	Status ¹	Habitat	Potential for Occurrence in Project Area
		(South Platte, Arkansas, Rio Grande, Yampa, Colorado) during both the summer and winter.	project area however winter range habitat is mapped 1 mile east of project area along Fountain Creek (CPW 2024a). The presence of prairie dog colonies may attract wintering bald eagles.
Burrowing owl (<i>Athene cunicularia</i>)	ST	Prairie dog colonies are primarily used by the owl for nesting and hunting. The owl is a migrant that can arrive in March and is typically migrating south by October.	May occur. Suitable habitat for this species is present in prairie dog colonies that occur in the project area.
Ferruginous hawk (<i>Buteo regalis</i>)	SC	Open areas such as grassland or shrubsteppe. Nests in rock outcrops, buttes, large shrubs, haystacks, and low cliffs.	May occur. Suitable foraging habitat is present in the project area and species has been documented adjacent to project area (Sullivan et al. 2009).
American peregrine falcon (<i>Falco peregrinus anatum</i>)	SC	Requires rocky outcrops for nesting. Uses a variety of habitats during the spring and fall migration.	May occur. No suitable nesting habitat but could use habitat in project area for foraging.
Mammals			
Preble's Meadow Jumping Mouse (<i>Zapus hudsonius preblei</i>)	FT, ST	Found in riparian areas and adjacent wet meadows. Prefer dense shrub, grass and forb ground cover along creeks, rivers, and associated waterbodies. Hibernate underground in burrows (CPW 2022).	Unlikely to occur, no suitable habitat in project area.
Black-tailed prairie dog (<i>Cynomys ludovicianus</i>)	SC	Habitat consists of intermixed shrublands, sagebrush habitat, and/or shortgrass and mixed grass prairie.	Known to occur. Black-tailed prairie dog colonies are present in the project area (Figure 1).
Fish			
Pallid Sturgeon* (<i>Scaphirhynchus albus</i>)	FE	Inhabits large, silty rivers with a diversity of depths and velocities formed by braided channels, sand bars, sand flats and gravel bars.	Unlikely to occur. No habitat in the project area. This species is included because it occurs in the Platte River system.
Greenback Cutthroat Trout (<i>Oncorhynchus clarki stomias</i>)	FT	Species prefers mid- to high-elevation streams with cold, clear water of moderate gradient.	Unlikely to occur. No suitable habitat in project area.
Insects			

Table 1. Federal and State-Listed Species and their Potential to occur the in Project Area

Species	Status ¹	Habitat	Potential for Occurrence in Project Area
Monarch butterfly (<i>Danaus plexippus</i>)	FC	Occurs throughout most of the contiguous U.S., requiring milkweed (<i>Asclepias</i> spp.) for reproduction which larval monarchs feed on. Adults feed on nectar from native plant species, including milkweed (NWF 2021).	May occur. Migration habitat present in the project area
Flowering Plants			
Ute ladies' tresses orchid (<i>Spiranthes diluvialis</i>)	FT	Sub-irrigated alluvial soils along streams; open meadows on floodplains including riparian areas.	Unlikely to occur. Outside known range in Colorado and no open meadows habitat in project area. Poorly documented historical occurrences in El Paso County only.

Source: USFWS 2024; CPW 2024a

¹Status Codes: FE = Federally Endangered; FT = Federally Threatened; FC = Federal Candidate; SE = State Endangered; ST = State Threatened, SC = State Special Concern;

* Water-related activities/use in the N. Platte, S. Platte and Laramie River Basins may affect listed species in Nebraska.

Monarch Butterfly

While no milkweed was documented in the project area during either the 2018 or 2024 site visit, the project area does provide low quality stop-over habitat during migration (spring migration is late March and April and fall migration is September through November). Habitats that may provide foraging opportunities for the monarch butterfly can include a wide range of vegetation communities, including disturbed roadsides, open fields, woodlands, wetlands, and pasture/agricultural areas.

Black-tailed Prairie Dog

Black-tailed prairie dog, a Colorado State Species of Special Concern, occurs within the project area (Figure 1). In Colorado, it is unlawful to capture, transport and relocate black-tailed prairie dogs without a permit from CPW. Because prairie dogs can expand their colonies into previously unoccupied areas over time, an additional site investigation should be conducted before beginning construction activities to verify the status of prairie dog colonies in the project vicinity.

State-Listed Raptors

State-listed raptor species that could potentially occur in the project area include bald eagle, burrowing owl, ferruginous hawk, and American peregrine falcon. In Colorado, bald eagles rely upon prairie dogs for prey during the winter. Bald eagle winter range habitat is mapped 1 mile east of project area along Fountain Creek (CPW 2024a). The project area is surrounded by Fort Carson which has heavy helicopter traffic and shooting ranges adjacent to the project area which may deter bald eagles and other raptors from using the project area for nesting. However, bald eagle, ferruginous hawk and peregrine falcon may occasionally hunt or perch in the project area. No raptor nests were documented in the project area during the 2024 site visit.

While no burrowing owls were observed during 2018 and 2024 site visits, there is potential habitat associated with the prairie dog colonies within the project area. Although no nests are currently known in the project area, suitable nesting habitat is present within prairie dog colonies located in the project area. Seasonal restrictions on construction and/or pre-construction nesting surveys will be required per CPW Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors (See Raptor, Migratory Bird and Wildlife Mitigation Recommendations).

Wetlands and Waters of the U.S.

Wetlands are a category of WOUS and are defined by 33 CFR part 328.3 as areas that are “inundated or saturated by surface or ground water at a frequency and duration sufficient to support—and that under normal circumstances do support—a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.” However, temporarily or seasonally flooded depressions that receive overland storm runoff or overbank floodwaters can meet the necessary criteria and be considered wetlands. This is often because of the slowly permeable soils that remain inundated or saturated and result in anaerobic, hydric soils after just 12 to 14 consecutive days.

Based on a desktop analysis and field survey conducted in February 2024, there are emergent wetlands, freshwater open ponds and streams in the project area (Figure 1). While no official wetland delineation was conducted, HDR was able to spot check and confirm mapped streams and wetlands during the February 2024 site visit. Prior to the site visit, a desktop delineation was conducted using NWI maps (USFWS, 2023) and the National Hydrography Dataset (USGS 2023) to identify possible wetlands and other aquatic resources, and recent and historic aerial photography in ESRI™ ArcGIS Pro™ to identify possible wetlands and other aquatic resources (Figure 1).

The jurisdictional extent of a stream is defined by the ordinary high water mark (OHWM), which is defined as the line on the shore/bank established by flowing and/or standing water, marked by such characteristics as a clear, natural line impressed on the bank, erosion shelving, changes in the character of soil, destruction of terrestrial vegetation, presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas (USACE 2007).

Several jurisdictional streams were observed during the site visit but no data on OHWM was collected. Little Fountain Creek is an intermittent creek that occurs on the southern end of the project area and drains into Fountain Creek. Fountain Creek is a stream that originates in Woodland Park in Teller County and flows through El Paso County to its confluence with the Arkansas River near Pueblo in Pueblo County, Colorado. Rock Creek is an intermittent creek that crosses under Millbrose Road in a culvert and drains into Little Fountain Creek (Figure 1). Several other small ephemeral drainages occur in the project area.

On September 8, 2023, the U.S. Environmental Protection Agency (EPA) and USACE published the final conforming rule to amend the definition of WOUS published in the *Federal Register* on January 18, 2023 (88 FR 3143). The final conforming rule was published to reflect the ruling in

the Supreme Court case, *Sackett v. EPA*, issued on May 25, 2023 (88 FR 61964). In large part, the definition of WOUS has been amended to establish a relatively permanent standard, modify the definition of *adjacent*, and remove the use of the significant nexus test. Based on this ruling, several of the isolated wetlands and ephemeral drainages in the project area may not qualify as a WOUS.

On July 6, 2023, the State of Colorado created a policy (CW-17) to enforce the discharge of dredged and fill material into state waters that would have been protected by Section 404 of the CWA pursuant to pre-2015 federal regulations and the Rapanos Guidance, but are no longer regulated due to the Sackett ruling, hereafter referred to as Sackett Gap Waters. The aquatic resources in the project area that may not qualify as a WOUS would likely be protected under the Sackett Gap Waters guidance in the State of Colorado and may require a Separate Section 401 Permit.

Clean Water Act Permitting Recommendations

Based on the potential presence of wetlands and WOUS observed during the September 2018 and February 2024 site visit, HDR recommends the following actions to ensure compliance with the Clean Water Act:

- Conduct an official wetland and waters of the U.S. delineation in areas that would be impacted by project construction.
- Coordinate with the USACE, Southern Colorado Branch Office, if impacts to features identified as wetlands or WOUS would result from the proposed project to determine which Nationwide Permit may be applicable.
- Coordinate with the State of Colorado to determine if aquatic resources in the project area would be protected under the Sackett Gap Waters guidance.

Raptor, Migratory Bird and Wildlife Mitigation Recommendations

HDR recommends the following conservation measures for future vegetation removal or construction activities at the project site:

- To the extent practical, all vegetation removal will be conducted outside of the nesting season for migratory birds (February 1 to August 31).
- A survey of the project area for nesting migratory birds will be completed prior to any vegetation removal during the nesting season. If active nests are located, appropriate buffers must be provided around active nests. These survey and buffer requirements for migratory bird nests do not apply if the vegetation removal is conducted outside of the February 1 to August 31 migratory bird nest season.
- A raptor survey will be conducted prior to the start of construction if construction occurs between February 1 and August 31 and will be performed no more than 7 days prior to construction. If an active raptor nest is observed within 0.5 mile of the project area, the CPW

will be notified in order to determine compliance with the CPW Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors guidance.

- Prior to any ground disturbance near active and inactive prairie dogs colonies in the project area, a qualified biologist will conduct a survey to identify if burrowing owls are present in any of the colonies. Based on CPW Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors, no human encroachment within 150 feet of the nest site will occur from March 15 through October 31 (CPW, 2020). Although Burrowing Owls may not be actively nesting during this entire period, they may be present at burrows up to a month before egg laying and several months after young have fledged. Therefore, it is recommended that efforts to eradicate prairie dogs or destroy abandoned towns not occur between March 15 and October 31 when owls may be present. Because nesting burrowing owls may not be easily visible, it is recommended that targeted surveys be implemented to determine if burrows are occupied. More detailed recommendations are available in a CPW document entitled “Recommended Survey Protocol and Actions to Protect Nesting Burrowing Owls.”
- Limit construction activities from December 1 to April 30 to avoid the elk winter concentration sensitive period.
- CPW requirements for Relocation Permits will be followed for all activities that affect Black-tailed prairie dogs within the project footprint. Prior to construction, a qualified biologist will conduct an additional site investigation to verify the current status of prairie dog colonies in the project vicinity.

References

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Appendix A – Photo Log



Photo 1: Overview of the Little Fountain Creek riparian area to the southeast. No Raptor nests were observed within the study area.



Photo 2: Northern edge of a Black-tailed prairie dog (*Cynomys ludovicianus*) colony on the eastern edge of the study area. This town spanned approximately 0.30 miles to the south. This colony was one of two colonies observed within the study area.



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Colorado Ecological Services Field Office
Denver Federal Center
P.O. Box 25486
Denver, CO 80225-0486
Phone: (303) 236-4773 Fax: (303) 236-4005

In Reply Refer To:
Project Code: 2024-0056862
Project Name: Southern Colorado Rail Park

March 01, 2024

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed, and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through IPaC by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at: <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts, see [Migratory Bird Permit | What We Do | U.S. Fish & Wildlife Service \(fws.gov\)](#).

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures, see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Colorado Ecological Services Field Office

Denver Federal Center
P.O. Box 25486
Denver, CO 80225-0486
(303) 236-4773

PROJECT SUMMARY

Project Code: 2024-0056862

Project Name: Southern Colorado Rail Park

Project Type: Railroad - New Construction

Project Description: rail park with associated access roads and infrastructure

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.6551519,-104.73215103829571,14z>



Counties: El Paso County, Colorado

ENDANGERED SPECIES ACT SPECIES

There is a total of 7 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 2 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

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1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Preble's Meadow Jumping Mouse <i>Zapus hudsonius preblei</i> There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/4090 General project design guidelines: https://ipac.ecosphere.fws.gov/project/MPMK7KG73ZELFONX5LPIY5WLW4/documents/generated/6861.pdf	Threatened

BIRDS

NAME	STATUS
Eastern Black Rail <i>Laterallus jamaicensis ssp. jamaicensis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/10477	Threatened
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location does not overlap the critical habitat. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened

FISHES

NAME	STATUS
Greenback Cutthroat Trout <i>Oncorhynchus clarkii stomias</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2775	Threatened
Pallid Sturgeon <i>Scaphirhynchus albus</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> Project includes water-related activities and/or use in the N. Platte, S. Platte, and Laramie River Basins which may affect listed species in Nebraska. Species profile: https://ecos.fws.gov/ecp/species/7162	Endangered

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9743	Candidate

FLOWERING PLANTS

NAME	STATUS
Ute Ladies'-tresses <i>Spiranthes diluvialis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2159	Threatened

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Colorado Springs city
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LEAD AGENCY CONTACT INFORMATION

Lead Agency: Federal Highway Administration



Photo 3: A potential wetland in the northern section of the study area. This was one of two retention ponds constructed near the actively mined area. Note the willow (*Salix sp.*) ringing the area, which would indicate hydric conditions.



Photo 4: A potential wetland surrounding a potential open water feature (unvegetated area). This feature is in a depression in the center of the northern section of the study area. The vegetation observed indicated hydric conditions.



Photo 5: A dry, vegetated wash with no aquatic features present. An NWI feature was mapped but no such feature is present.



Photo 6: An open water feature on the eastern side of the study area. Note the lack of vegetation.



Photo 7: Potential raptor nesting habitat along Little Fountain Creek. No nests were observed within the study area.



Photo 8: Little Fountain Creek, an intermittent creek, runs southeast through the middle of the study area. Photo direction is west.



Photo 9: An old irrigation ditch near the center of the study area. This area was below a series of impoundments on Rock Creek.



Photo 10: A potential wetland within a depression below impoundments on Rock Creek. Some of the vegetation observed was hydric, but many upland species were observed as well.



Photo 11: A potential wetland within a depression behind a large impoundment. Rough cocklebur (*Xanthium strumarium*) was the dominant vegetation observed.



Photo 12: Upstream from the previous location, another potential wetland was observed within a depression. Bulrush (*Schoenoplectus sp.*), and sedge (*Carex sp.*) were observed in this area.



Photo 13: An open water within the study area along Rock Creek.



Photo 14: The southern edge of a large prairie dog town which extended north from this location, onto private property.



Photo 15: The prairie dog town included both sides of the road and extended northwest from this location.



Photo 16: A large open water, with wetlands surrounding the area. Approximately five mallards (*Anas platyrhynchos*) were observed on the water.

Appendix B – USFWS IPaC