United States Department of the Interior

FISH AND WILDLIFE SERVICE

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ES-61130-Billings
M.32 – NRCS - FSA

November 28, 2006

Mr. Glenn C. Patrick
Montana State Farm Service Agency
10 E. Babcock Street
Bozeman, Montana 59715

Dear Mr. Patrick:

The U.S. Fish and Wildlife Service (Service) recently became aware that producers seeking renewal contracts for the Conservation Reserve Program (CRP) may be required to control black-tailed prairie dogs (*Cynomys ludovicianus*) on contract acreage, or lose their benefits. We wish to inform your office of the efforts to recover prairie dogs in Montana, and provide a mechanism to allow producers to forgo control on their CRP tracts. This response is provided by the Service under the authority of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531-1543), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-712) (MBTA), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.).

The Service considers the CRP a multipurpose conservation program. The purpose of the program is "to assist owners and operators of farms and ranches to conserve and enhance soil, water, and related natural resources, including grazing land, wetland, and wildlife habitat."

The Farm Service Agency informed the Service on September 19, 2006 that the CRP-1 Appendix states, "The participant agrees to control on land subject to a CRP contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary to avoid an adverse impact on surrounding land…". An additional $5.00 per acre maintenance payment is provided to all participants to maintain approved cover.

Although the CRP Appendix addresses the establishment and maintenance of the approved cover, the Service recommends that the requirement be waived. The black-tailed prairie dog is a "nongame species in need of management" under Montana Fish, Wildlife and Parks (MFWP) statute (87-5-102, MCA), as well as a 'vertebrate pest' under Montana Department of Agriculture statute (807-1101, MC). The MFWP also designates the black-tailed and white-tailed prairie dog as a "species of concern" (http://fwp.mt.gov/wildthings/concern/default.html) and a "Tier I

species" (i.e. greatest conservation need; http://fwp.mt.gov/wildthings/cfwcs/strategy.html) in *Montana's Comprehensive Fish and Wildlife Conservation Strategy*.

The National FSA office has since suggested that Montana FSA should not make the decision on whether the prairie dog should be controlled or not. The Montana FSA has stated that in order to allow prairie dogs to remain on CRP, the County Committee (COC) should notify the CRP participant that a recommendation from a State or Federal Agency stating that no control measures have to be taken must be provided to the County FSA Office. If the COC receives written recommendations from a Federal or State Agency, the CRP acreage affected by the prairie dogs may remain in CRP and the participant may continue to receive payments. If a CRP participant does not provide a recommendation from a Federal or State agency, the COC will require that a plan be submitted to control the prairie dogs.

Species Status

Section 87-5-103 (1), Montana Code Annotated states that nongame wildlife species should be "perpetuated as members of ecosystems". The effort to recover the prairie dog ecosystem in Montana is demonstrated by the years of work by the Montana Prairie Dog Working Group (MPDWG). The MPDWG is composed of state and federal agencies, private conservation groups, landowner groups and private individuals concerned with the conservation and management of prairie dogs and associated species in Montana. In January 2002, the MPDWG released the "*Conservation Plan for Black-tailed and White-tailed Prairie Dogs in Montana*" (hereafter "Conservation Plan") (MPDWG 2002). This plan was approved by the MFWP, the Montana Department of Agriculture, and the Montana Department of Natural Resources and Conservation, and cooperation was pledged by the Bureau of Land Management, U. S. Forest Service, the Bureau of Indian Affairs, Natural Resources Conservation Service (NRCS) and U. S. Department of Agriculture Animal and Plant Health Inspection Service. The Conservation Plan can be accessed online at <http://www.fwp.mt.gov/wildthings/prairiedogs.asp>.

The goal of the Conservation Plan is to provide for management of prairie dog populations and habitats to ensure the long-term viability of prairie dogs and associated species. Five objectives were deemed necessary to achieve that goal: 1) Confer legal status on prairie dogs that is consistent with policy provisions of Sections 87-5-102 and 103, MCA, and current management needs; 2) Develop statewide and regional prairie dog distribution and abundance standards; 3) Develop management protocol for prairie dog conservation on federal, state and private lands; 4) Develop and implement a prairie ecosystem education program; 5) Identify and support or conduct research projects designed to form solutions to long-term biological and social problems related to black-tailed prairie dog communities and their management. The prairie dog is currently "non-game wildlife in need of management", simultaneously maintaining existing authority to control prairie dogs as pests.

Estimates of the historic abundance of the prairie dog in Montana vary. Flath and Clark (1986) estimated early black-tailed prairie dog abundance at 1,500,000 acres. Anderson et al. (1986) cited a report by Bell (1921) that documented the poisoning of 7 million acres of prairie dogs in Montana during 1920. In 1998, almost 67,000 acres of active black-tailed prairie dog were mapped. The Conservation Plan (Montana Prairie Dog Working Group 2002) established an abundance standard of 125,000 to 145,000 acres, including Tribal lands.

In response to a petition to list the black-tailed prairie dog under the ESA in 1998, the Service had found that the status of the species merited listing as threatened, but that further action to place it on the list was precluded by actions to address higher priority species. In 2004, the Service determined that "candidate" status was no longer necessary, and the "warranted, but precluded" status was removed. However, the Service will continue to monitor the status of the black-tailed prairie dog. Federal Register notices with respect to these decisions can be found on-line at www.r6.fws.gov/btprairiedog <http://www.r6.fws.gov/btprairiedog>. Both the black-tailed and white-tailed prairie dog is considered "Species of Concern" in Montana. This informal designation (not a legal designation) by MFWP and the Montana Natural Heritage Program indicates relative rarity, the existence of threats to the species, or the lack of status and trend information. Montana's list of Species of Concern can be located on www.fwp.mt.gov/wildthings/concern/default.html <http://www.fwp.mt.gov/wildthings/concern/default.html>. Both the BLM and the USFS list both species of prairie dog in Montana on their Sensitive Species list.

Montana statutes provide dual status for black-tailed and white-tailed prairie dogs: as "Nongame wildlife in need of management" (87-5-101, MCA et seq.) and as "vertebrate species" for the purpose of forming rodent control districts (7-22-22, MCA et seq.). The annual rule regulating prairie dog shooting, jointly adopted by FWP and the Montana Fish, Wildlife and Parks Commission (FWP Commission) has been in effect for the past 5 years (2002-2006) and applies only to public lands (not including State school trust lands) (<http://www.fwp.mt.gov/wildthings/prairiedogs.asp>). Montana FWP and the FWP Commission will continue to consider adoption of management regulations for prairie dogs. The MDA continues to provide technical assistance to landowners who want to contain the size of prairie dog colonies.

It has always been a concern to some landowners, that expanding colonies of prairie dogs will eventually result in prairie dog establishment on their lands. Currently, there is no state statue or administrative rule in Montana that requires landowners to control prairie dogs that migrate onto adjacent private lands.

Implications of Control

The National Resources Inventory for 1997 indicated that over one million acres of nonfederal rangeland has been lost between 1982 and 1997. Although we have not seen data after 1997, the Service believes that rangeland loss has continued in Montana. Since 2000, more than 3.6 million acres has been enrolled in the CRP Program in Montana. Even if active prairie dogs are only a small fraction of CRP acreage, the contribution of those colonies to the recovery of the black-tailed prairie dog in Montana would be significant.

The endangered black-footed ferret (*Mustela nigripes*) is an obligate of the prairie dog ecosystem. It cannot survive without large complexes of active prairie dog colonies. Black-footed ferrets may be affected by poisoning prairie dogs on CRP tracts. Because CRP maintenance payments constitute a federal nexus, the FSA as the action agency, should consult with the Service on all control activities. If black-tailed prairie dog colonies or complexes greater than 79 acres will be destroyed, surveys for ferrets should be conducted even if only a portion of the colony or complex will be disturbed. A prairie dog complex consists of two or more neighboring prairie dog towns, each less than 7 kilometers (4.34 miles) from each other

(Black-footed Ferret Survey Guidelines, USFWS 1986). However, in some situations, the Service recognizes the very low probability that isolated colonies may harbor black-footed ferrets (Hanebury and Biggins 2006). We recommend that you contact the Billings Sub Office before you eradicate the colony(ies).

In Montana, three prairie dog ecosystem species have been considered for protection under the ESA. Continued deterioration of species habitat and declines in species status could lead to renewed efforts to list these species. The burrowing owl (*Athene cunicularia*), mountain plover (*Charadrius montanus*), and ferruginous hawk (*Buteo regalis*) are uncommon relative to historic populations (Allen 1874). The ferruginous hawk was petitioned for listing in 1991, but this petition was denied by the Service. The mountain plover was originally considered a candidate for listing as a threatened species in 1982. It was proposed for listing as a threatened species under the ESA in 1999, and this was re-opened for comments in 2002. The petition to list the mountain plover as a threatened species was determined "not warranted" and in September 2003 the proposed rule was withdrawn. On November 16, 2006, the Service was challenged on its ruling, and asked to reinstate the proposal to list the mountain plover as a threatened species. The burrowing owl has not been petitioned for listing under ESA, but is considered threatened in Alberta and Saskatchewan. All of the above species are considered "Species of Concern" (www.fwp.mt.gov/wildthings/concern/default.html <http://www.fwp.mt.gov/wildthings/concern/default.html>) in Montana due to declines in Montana or within their range. The ferruginous hawk, mountain plover, burrowing owl and prairie grassland birds associated with prairie dog colonies are migratory birds and therefore, protected under the MBTA.

New Efforts for Fish and Wildlife Conservation in Montana

In 2001, Congress established the State Wildlife Grants (SWG) program as a funding vehicle for states conservation efforts as outlined in state conservation strategies. In 2005, *Montana's Comprehensive Fish and Wildlife Conservation Strategy* (Strategy) was finalized. In the Strategy, the Mixed Shrub/Grass Associations was identified as a community type of greatest conservation need. Species of Greatest Conservation Need or Tier I species, have been identified for each community type and include the black-tailed prairie dog that depends on this habitat for breeding and survival. Other Tier I species include the burrowing owl, mountain plover, long-billed curlew (*Numenius americanus*), and the Greater Sage-Grouse (*Centrocercus urophasianus*). The MFWP has stated that it has a clear obligation to use its resources in order to conserve these species as they have been identified as conservation priorities for Montana.

Because of the high conservation value that prairie dog colonies affords CRP tracts, we recommend that active colonies contribute to the overall Environmental Benefits Index (EBI) of CRP renewal contract bids. The Service would like to offer its assistance to an interagency team that would make adjustments to the EBI formula or process to assist prairie dog habitat as a positive component to the index. The cover quality subfactor that is currently a dominant factor in the score could be re-evaluated. We also encourage the FSA, as outlined in Section 226(c) of the 1994 U.S. Department of Agriculture Reorganization Act, to seek the advice and concurrence of the Montana NRCS office on priorities and guidelines for administering CRP in Montana. This concludes informal consultation pursuant to regulations in 50 CFR 402.13 implementing the Endangered Species Act of 1973, as amended. Management of black-tailed prairie dog colonies on CRP lands should be re-analyzed if new information reveals that effects of the action may affect threatened, endangered or proposed species, or if the policy is modified in a manner that

causes an effect not considered in this consultation. Please contact Lou Hanebury, Fish and Wildlife Biologist, at 406-247-7367 if additional information is needed.

Sincerely,

R. Mark Wilson

R. Mark Wilson
Field Supervisor

cc: USFWS, ES, Billings, MT (Attn: Lou Hanebury)
USDA, NRCS, Bozeman, MT (Attn: Pete Husby)
MFWP, Native Species Biologist, Billings, MT (Attn: Allison Puchniak Begley)
MT Department of Agriculture, Billings, MT (Attn: Monty Sullins)

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