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State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

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October 19, 2010

Larry Crist, Utah Field Supervisor
United States Fish and Wildlife Service
Utah Field Office
2369 West Orton Circle, Suite 50
West Valley City, Utah 84119

Re: Public Outreach for the Evaluation of the Utah Coal Regulatory Program

Dear Mr. Crist:

Thank you for providing comments in response to our May 26, 2010 letter regarding the evaluation process for the Utah Division of Oil, Gas & Mining (DOG M). Your input will help us to evaluate the Utah coal regulatory program. Your June 28, 2010, letter proposes two topics for evaluation during Evaluation Year (EY) 2011.

First, your letter states that many coal mines are required under their mining permits to conduct annual aerial surveys for the purpose of monitoring raptor nesting in the vicinity of the mines. You go on to explain that until 2008, coal mine operators funded the Utah Division of Wildlife Resources (UDWR) to conduct all the necessary aerial raptor nest surveys for the entire region. This system enabled the resource, regulatory, and land management agencies to examine raptor nest use through time and over a wide geographic area, and provided critical information for mine operators and the agencies for impact analyses, mitigation planning, and project permitting. However, the UDWR no longer conducts annual aerial surveys and the responsibilities have reverted to the coal mines to individually address the requirement, hire their own surveyors, and submit the data to the UDWR.

For the reasons presented above, you recommend that DOGM and OSM conduct an evaluation to examine the raptor nest monitoring program, specifically whether it is providing and will continue to provide consistent, reliable data over the long term and across a regional scale. You further suggest that the evaluation should examine the consistency of the survey methodology, the experience level of the survey biologists and the relationship to data quality, the type and detail of data being recorded, and the reliability of data transfer to UDWR's centralized database. You conclude by recommending that the evaluation identify specific strategies that could improve the program, if necessary.

Somewhat related to your recommendation, OSM and DOGM conducted an evaluation of Wildlife Exclusionary Periods in EY 2010 to determine if the Utah program was successful in preventing offsite impacts by enforcing a *Protection and Enhancement Plan* to minimize disturbances and adverse impacts to fish and wildlife as a result of mining activities. During this evaluation, the Team realized the importance of consistency with Raptor monitoring, since three

of the mines chosen for the topic evaluation have encountered spatial and seasonal buffers related to construction and helicopter-assisted drilling. The Team also recognized that proper monitoring is essential to ensure that birds of prey are being protected throughout the life of mining and reclamation operations.

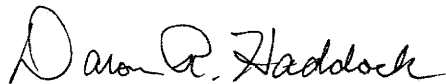
Accordingly, we fully understand your concerns regarding the raptor nest monitoring program, and we agree that this topic warrants an evaluation by the joint DOGM-OSM Evaluation Team during Evaluation Year 2011. We view this new topic as a compliment to the *Wildlife Exclusionary Periods* evaluation that was conducted in EY10. Once the evaluation has been completed, we will provide you with a copy of the resultant findings, recommendations, and conclusions.

Your letter also references the topic evaluation we conducted in EY 2009 regarding water depletions to the Upper Colorado River basin associated with coal mining and past efforts to regulate the mitigation of impacts to habitat quality and quantity for endangered fish in mainstream and tributary rivers. The EY 2009 evaluation concluded that a guidance document should be created that standardizes water depletion calculations and simplifies the consultation process. Your letter notes that the USFS and DOGM have worked together during the past year to finalize the guidance document and requests that we summarize this cooperative effort in our 2010 evaluation and discuss the pertinent parts of the document.

In response, we refer you to the EY 2010 Annual Evaluation Summary Report for the Utah Regulatory Program which is available on both the OSM internet site at www.osmre.gov and the DOGM site at <http://www.ogm.utah.gov>. Specifically, a summary of the Upper Colorado River basin guidance document which will be instrumental in protecting the endangered species in the upper Colorado River Basin is discussed in the first bullet under "Accomplishments" on page 6 of the Annual Report. This summary discussion addresses your proposed evaluation request.

Thank you once again for commenting on the DOGM evaluation process, and please don't hesitate to contact us if additional issues arise.

Sincerely,



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