



**State of Utah**  
 DEPARTMENT OF NATURAL RESOURCES  
 DIVISION OF OIL, GAS AND MINING

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September 20, 1999

Reed Harris  
 U. S. Fish and Wildlife Service  
 Utah Field Office  
 Lincoln Plaza  
 145 East 1300 South, Suite 404  
 Salt Lake City, Utah 84115

Re: Fish and Wildlife Service Comments, Utah American Energy, Inc., Lila Canyon Mine, ACT/007/013-98-1, Folder #2, Carbon County, Utah

Dear Mr. Harris:

As you are aware, we are in the process of reviewing the permit application package for the Lila Canyon Mine. We received comments from the Fish and Wildlife Service on April 21, 1999, and have attempted to incorporate them in our review. Some issues are not fully resolved and will require consultation between the Fish and Wildlife Service, the Division of Wildlife Resources, the Division of Oil, Gas and Mining, and the applicant.

The purpose of this letter is to show how we have addressed each concern raised by your office and to determine if additional work needs to be done. We feel it is important to ensure, before permit issuance is imminent, that each concern is being adequately addressed.

**Listing and Presence of Threatened and Endangered Species.**

Your letter of April 14, 1999, says the listings of threatened and endangered species should be updated and suggests it may be appropriate to remove Table 3-1 from the application. This letter also mentions each species that could be present in the area and asks for clarification whether all species were evaluated for actual presence within the project area's zone of influence.

We agree Table 3-1 is incomplete and should probably be eliminated. One requirement in our latest review is that this table be eliminated or updated to include all species in the area.

The following discussion about each species on the Fish and Wildlife Service list is extracted from the Division's technical analysis.

The proposed addition to the permit area does not contain habitat for southwestern willow flycatchers. The application documents there are no perennial water sources or riparian areas in either the current permit area or the proposed addition, and according to verbal information from the applicant's consultant, there are few, if any, willows or similar riparian-type vegetation associated with the seeps and springs in the proposed addition to the permit area. There may have been a few willows or shrubs, but there were no dense patches as would be

required by southwestern willow flycatchers.

The application needs to contain a discussion similar to the preceding paragraph discussing the likelihood of southwestern willow flycatcher habitat being in the proposed addition to the permit area. Although the application says there are no riparian areas or streams, it needs to discuss other areas, such as those around seeps and springs, that could potentially contain this habitat.

Bald eagles are fairly common winter residents of Utah, and they could visit the area. However, they generally like to roost in large trees that do not exist in the proposed disturbed area. Therefore, it is unlikely they will be adversely affected.

Peregrine falcons have recently been found nesting in a few places in the Book Cliffs and Wasatch Plateau although raptor surveys have failed to locate them in the proposed addition to the permit area. The applicant will need to continue to look for them in future raptor surveys. Peregrine falcons are no longer listed as threatened or endangered.

Four fish species of the Upper Colorado River drainage have been listed as threatened or endangered, and although the mine would not affect them directly, water usage has been determined to adversely affect these species. As discussed in the fish and wildlife protection part of this review, the mine is expected to use about 21.3 acre-feet of water annually, including water lost through mine ventilation. Mitigation is required when the annual depletion exceeds 100 acre-feet.

Black-footed ferrets have historically been found in eastern Utah, but there have been no confirmed sightings in recent years. If any were in the area, it is most likely they would be affected by road construction.

(Information in the following discussion on the distribution of plants is from *A Utah Flora* or is verbal information from Bob Thompson, a botanist with the Forest Service.)

Barneby reed-mustard (*Schoenocrambe barnebyi*) grows at elevations of about 5600 to 5700 feet on the Chinle formation. The proposed disturbed area is at a higher elevation, and it does not contain the Chinle formation. Therefore, the area is not considered habitat for this species.

The reported elevation range for Jones cycladenia (*Cycladenia humilis* Var. *jonesii*) overlaps the proposed disturbed area, but it grows in sandy gypsiferous soils derived from the Cutler, Summerville, and Chinle formations, and these are not found in the proposed addition to the permit area.

Last chance Townsendia (*Townsendia aprica*) grows in salt desert shrub and pinyon-juniper communities on clay or clay-silt exposures of the Mancos Shale. It has been found mainly in the Fremont Junction area and not on the east side of the San Rafael Swell.

The Maguire daisy (*Erigeron maguirei*) has only been found in a few places in the San Rafael Swell and in Capitol Reef National Park in canyon bottoms in the Wingate and Navajo

Sandstone formations. There is essentially no possibility this species could occur in the proposed addition to the permit area.

Three cactus species are included on the Fish and Wildlife Service list. The San Rafael cactus or Despain footcactus (*Pediocactus despainii*) is very difficult to find and grows in open pinyon/juniper communities in and on the edges of the San Rafael Swell. This is the type of habitat in the proposed disturbed area, and, according to Bob Thompson of the Forest Service, there is potential this species could occur in the area.

According to Mr. Thompson, the Wright fishhook cactus (*Sclerocactus wrightiae*) also has potential of occurring in the area. It grows in salt desert shrub and shrub/grass to juniper communities in soil derived from Mancos Shale and other formations.

It is understood the applicant's consultant searched for the Despain footcactus and Wright fishhook cactus and did not find them. This needs to be documented in the application together with information about when the search was performed and who did it. The July 29, 1999, letter from Environmental Industrial Services in Appendix 3-4 does not give this information.

The Winkler cactus (*Pediocactus winkleri*) is a tiny plant that grows in salt desert shrub communities at lower elevations than those in the proposed disturbed area. Its distribution is more to the west, and it is unlikely it occurs in the proposed addition to the permit area.

The Fish and Wildlife Service letter discusses proposed mine effluent discharge into the Price River. This is no longer a part of the proposal. The only potential discharge would be from the sediment pond in the event of a precipitation event large enough to cause the pond to overflow, and this would be regulated under a UPDES permit.

## **Raptors**

The applicant is required, as a performance standard, to ensure that all power lines used for or incidental to coal mining and reclamation operations on the permit area are designed and constructed to minimize electrocution hazards to raptors except where it is determined these requirements are not necessary. The application contains a commitment to this effect, and we have recommended the publications you reference in your letter.

We recognize that all raptors are protected, not just bald and golden eagles, and have required the applicant to modify the commitment in Section 358.200.

We are concerned there are at least two eagle nests very close to the proposed facilities that would almost certainly not be used through the life of the mine. There are other nests in the facilities area that might also be negatively affected. The applicant has committed to consult with the Fish and Wildlife Service and Division of Wildlife Resources to design a protection and mitigation plan.

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### **Direct and Indirect Impacts to Wildlife**

We are requiring the applicant to modify the statements in Section 333 that loss of habitat during construction will be the major impact to wildlife in and around the mine site. We agree operational impacts, while difficult to quantify, are greater than those associated with construction. We are also requiring the applicant to make a definitive commitment regarding firearm and off road vehicle use in its area of control.

The Division will probably not regulate the road. Similar roads in the area have been built by county road departments, so the Division is unable to require specific speed limits or that animal carcasses be removed except where these roads are permitted, such as in the mine yard itself. Even so, the education program will include information about the dangers of animals on the road, particularly during periods with reduced light. We are requiring the applicant to include in the education program information about removing wildlife carcasses and about the danger of collisions with raptors.

The reclamation seed mix currently includes four species not native to Utah, and the coal rules allow introduced species when they are desirable and necessary to achieve the postmining land use. We do not feel the introduced species in the seed mix meet this standard, so the applicant has been required to either remove the introduced species or show why they are desirable and necessary.

Thank you for your comments. Please let us know if you feel any of these issues is not being adequately addressed. We look forward to working with you to resolve the issues related to raptor nest protection. Please call Paul Baker at 801-538-5261 if you have any questions.

Sincerely,



Daron R. Haddock  
Permit Supervisor