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(See attached file: Temp Lila Canyon Mine MRP as of 2.doc)(See attached
file: LetUSFWSDeterminLila3.doc)(See attached file: 0074.pdf)

CC: "Pam Grubaugh-Littig" <PAMGRUBAUGHLITTIG@utah.gov>, "Wayne Hedberg"
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Lila Canyon Mine MRP as of 2/06

From pg 10:

Raptor surveys were initiated in 1998 and continue annually with the exception of 2004. These surveys were initiated before groundbreaking of the Lila project. The results of these surveys are in Appendix 3-5. The entire Book Cliffs escarpment within the permit area was inventoried for cliff nesting raptors. In addition, a 1-mile buffer zone was inventoried around areas of potential development.

An active golden eagle nest, with young, was documented during the 1999 spring raptor survey. In 2005 nest 946 contained a chick that was possibly dead. USFWS, Laura Roma, UDWR, Chris Colt, and BLM, Dave Mills determined, during the EA process, that there was a high probability these nest sites would be abandoned. A cooperative agreement with the regulatory agencies and UEI was finalized and is made part of the mitigation for the Lila Canyon EA. One nest discussed above, also lies in an area of potential subsidence which is a mute point due to its close proximity to the mine site. Since the nests are located so close to the mine surface facility and that there was a high probability these nest sites would be abandoned, these nests will be mitigated by a prey base offsite vegetation treatment project approved by the USFWS, UDWR and BLM (See page 19 for BLM mitigation information).

Although it was predicted that these nests might be abandoned, the Operator will coordinate closely with USFWS, DWR, and the Division to avoid "take" of golden eagles prior to construction and during operations. Immediately following any raptor survey that shows that the eagles are nesting, the operator will contact the USFWS and DOGM. The agencies will immediately coordinate to determine appropriate measures.

Although the Operator will avoid "take", the operator agreed to the BLM-lead mitigation

project that is based on the premise that there is sufficient nest sites in the area to accommodate the population base. The limiting factors appears to be available prey base. Mitigation is designed to enhance the prey base while concurrently enhancing habitat for big game, deer, elk, and bighorn sheep.

From pg 13

The extent and degree of subsidence will be in large dependent on both the amount of overburden as well as the mining method. Employees and or consultants of the operator have numerous years of experience mining the Bookcliffs and Wasatch areas and none have observed nor are aware of any negative impacts on wildlife or vegetation, as a result of subsidence, with the exception of

- 1) Escarpment Failure which is not anticipated.
- 2) Disruption of Surface and / or Ground Water, which is not anticipated.

(1) Escarpments will be protected by implementing escarpment barriers. An escarpment barrier of a minimum of 200', within which no second mining will take place, will be used to protect all escarpments.

From pg 16

First seam mining (Leaving the pillars) should adequately protect nests within a ½ mile radius of the surface facilities have a high probability of being abandoned by indirect disturbance associated with mine activities. The Lila Canyon EA # UT-070-99-22, outlines mitigation recommended through a cooperative effort between Utah Department of Wildlife Resources, Bureau of Land Management, U.S. Fish and Wildlife and UtahAmerican Energy, Inc. where mitigation would be implemented to increase prey base off-site. The construction of alternative nests was considered to be ineffective. Eagle distribution was not limited by suitable nest sites but by available prey.

An MSO two-year calling survey will be completed according to Appendix 3-4. Results as described in Appendix 3-4 will be reported to the Division, UDWR, and USFWS. This two-year survey will include four night time surveys with no more than one survey prior to end of April and at least three surveys prior to end of July. Results will be submitted to USFWS, DWR, and the Division immediately following of each night time survey. If owls are observed, the agencies will immediately coordinate to determine appropriate measures.

From pg 17

This mitigation is under advisement of the wildlife professionals of both the BLM and the Utah Division of Wildlife Resources. The mitigation designed will offset impacts to bighorn sheep, mule deer, elk, and chukker specifically. The mitigation committed to in association with the Lila Mine EA is :

- (1) Install two guzzlers
- (2) Participate in a BLM habitat enhancement program on 70+ acres-conversion from Pinyon/Juniper to shrubs, forbs, and grasses.

The overseeing agency for the EA mitigation/enhancement will be the BLM. The implementation dates, and project locations will not be determined until the BLM notice to proceed is given, after permit approval. The Permittee will submit the BLM mitigation plan as an Appendix to this volume within one year of the initial mine construction. The BLM plan will include: project goal, expected benefits, project procedures, company commitment, implementation dates, project location and agencies contacts.

From pg 19

The Operator will ensure that DWR surveys for cliff nesting raptors within proposed facilities areas at least two years prior and one year following construction. The Operator will conduct annual raptor surveys.

6. An active golden eagle nest, with young, was documented during the 1999 spring raptor survey. The nest is located in the left fork of Lila Canyon within the 1-mile buffer zone. (See Plate 3-1). A consultation with USF&W, BLM, and UDWR was held in the fall of 1999. Line of site and potential mitigation was addressed during this meeting. The results of this consultation are addressed in Sec 322.220 and the Lila Canyon EA. This nest was not active in 2000, 2001, 2002, or 2003. A survey was not done in 2004. In 2005 nest 946 contained a possibly dead chick. (See Appendix 3-5 for updated inventories)

The Applicant does not plan to monitor any wildlife

species during the life of the operation with the exception of raptors. Helicopter spring raptor surveys will be conducted at a minimum of a 1-mile radius around any new or potentially disruptive mining activity, 2-years prior and annually after the proposed activity. The Operator will contact the USFWS and the Division immediately following raptor fly-over surveys if raptors are observed nesting.

From pg 38

Prior to any new surface disturbance a raptor inventory will be conducted to ensure that no raptors or their nests or young would be adversely impacted through any mining or mine related activity. A copy of historical raptor data as well as current survey results are attached as Appendix 3-5.

A one-half mile buffer zone of no new disturbance during critical nesting periods will be maintained during that portion of the year that the nest sites are active.

358.200. No coal mining and reclamation operations will be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nests, or any of the eggs.

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

January 26, 2006

Henry Maddux, Field Supervisor
U. S. Fish and Wildlife Service
2369 West Orton Circle
West Valley City, Utah 84119

RE: United State Fish and Wildlife Service (USFWS) Informal Consultation on Lila Canyon Mine Extension of the Horse Canyon Mine, UtahAmerican Energy Inc. (UEI), Horse Canyon Mine, C/007/013, Outgoing File

Dear Mr. Maddux:

The Division of Oil, Gas and Mining is currently reviewing the Horse Canyon Mine – Lila Canyon extension of the Horse Canyon Mine. The proposed expansion area is about 4660 acres with about 42 acres of surface disturbance for the facilities site. Subsidence caused from undermining operations could cause surface impacts.

The enclosed map shows the proposed Lila Canyon extension area is located in Emery County, Utah (7.5 Minute USGS Quadrangle map is Lila Point). The legal description for the proposed Lila Canyon extension is: T16S R14E Sections 10, 11, 12, 15, 14, 13, 22, 23, 24, 26, and 25, and in T16S R15E Sections 19 and 30.

The proposed Mining and Reclamation Plan (MRP) includes a list of Threatened and Endangered (TE) species for Emery County. This TE list was taken from the current USFWS 2004 list and issued by the Utah Natural Heritage Program (Utah Division of Wildlife) in June 2005. The TE list includes Barneby reed-mustard, Jones cycladenia, last chance townsendia, Maguire daisy, San Rafael cactus, Winkler cactus, Wright fishhook cactus, bonytail chub, Colorado pikeminnow, humpback chub, razorback sucker, Mexican spotted owl (MSO), black-footed ferret, bald eagle, western yellow-billed cuckoo, and southwestern willow flycatcher.

The Division has informally consulted with the USFWS on several occasions since 1999 concerning this project. The last letter the Division sent was on August 17, 2005. Since then we have had further discussions with your staff and UEI about specific matters concerning this proposed project.

OLENE S. WALKER
Governor

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Lieutenant Governor

The Division has also coordinated with the Office of Surface Mining (OSM) to conduct the formal consultation with your office concerning the Colorado River endangered fish. OSM sent their consultation letter on December 13, 2005 and we received the USFWS response letter on January 12, 2006.

Please refer to Division letter dated August 17, 2005 and the following updated paragraphs for pertinent information that may be useful during this informal consultation process:

TE Species

There is suitable habitat for the MSO within the proposed permit area. UEI would conduct a MSO calling surveys two years prior to reaching potential MSO habitat. UEI would survey areas with the following description: 1) areas identified by the 2000 model and supported by the Willey flyover results and 2) areas classified as subsidence zones. UEI would submit the results to USFWS, DWR, and the Division immediately following each nighttime survey. If the results were positive for the MSO, the agencies would immediately coordinate to determine appropriate measures.

Sensitive and Other Species of Concern

There are five golden eagle nests in the escarpments above the proposed Lila Canyon surface facility area. These nests are approximately between 0.38 and 0.75 miles from the western edge of the proposed facility boundary. UEI has conducted fly-over surveys of this area since 1998, with the exception of 2004.

Prior to construction and during operations UEI would coordinate closely with USFWS, DWR, and the Division to avoid a 'take' of golden eagles. UEI would conduct first seam mining (pillars remain) and conduct annual raptor surveys. UEI would submit the results of these surveys to the Division in Annual Reports. However, UEI would immediately contact the USFWS and the Division immediately following any raptor survey that shows that eagles were tending nests or nesting. The agencies would immediately coordinate to determine appropriate measures.

Division's Determination of Effects

The Division requests concurrence from the USFWS with our

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Lieutenant Governor

determinations that the proposed Lila Canyon expansion project “may affect”, but “is not likely to adversely affect” MSO or its critical habitat; and that there will be “no effect” on the OTHER threatened or endangered species listed for Emery County with the exception of the Colorado River fish. As mentioned previously, USFWS has already reviewed the OSM formal consultation letter and issued a response letter concerning the endangered fish. Final decisions concerning TE species and the proposed project will come after the Division receives responses from USFWS.

Thank you for the opportunity to discuss the matters of this mine plan and the conservation of TE species with your office. We would appreciate your response within 30 days so we may proceed with the review process.

If you have any questions about this project, please call me at (801) 538-5268 or Jerriann Ernstsens at (801) 538-5214.

Sincerely,

Pamela Grubaugh-Littig
Permit Supervisor

0074

Incoming C/007/013
CC: Jerriann
Wayne H.



United States Department of the Interior
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

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DIV. OF OIL, GAS & MINING

In Reply Refer To
FWS/R6
ES/UT
I-0135

February 28, 20065

Jerriann Ernstsén
Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801

RE: Informal Section 7 Endangered Species Consultation, Lila Canyon Extension,
UtahAmerican Energy Inc. (UEI), Horse Canyon Mine, C/007/0013

Dear Ms. Ernstsén:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of February 1, 2006. Potential impacts to proposed or listed species from mining activities have been previously addressed in the Service's September 24, 1996 Biological Opinion and Conference Report on Surface Coal Mining and Reclamation Operations under the Surface Coal Mining and Reclamation Act of 1977. As part of the terms and conditions of this BO, the regulatory authority must implement and require compliance with any species-specific protective measures developed by the Service field office and the regulatory authority.

Protective measures for the Mexican spotted owl (MSO) are outlined in your February 1 letter and include:

Because suitable habitat for the MSO within the proposed permit area, UEI will conduct MSO surveys in accordance with USFWS protocol two years prior to reaching potential MSO habitat, in areas with the following factors; 1) areas identified by the 2000 Willey-Spotskey Canyon Habitat Model and supported by the Willey flyover results, and 2) areas classified as subsidence zones.

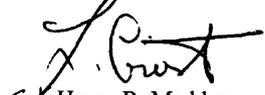
If the surveys indicate the presence of MSO in areas that may be subsided, the agencies will immediately coordinate to determine appropriate measures prior to mining in those areas.

Based on your commitment to implement the aforementioned protective measures, we concur with your "not likely to adversely affect" determination for the Mexican spotted owl. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

Only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

We appreciate your interest in conserving endangered species. If further assistance is needed or you have any questions, please contact Diana Whittington, at (801) 975-3330 extension 128.

Sincerely,


Fc. Henry R. Maddux
Utah Field Supervisor

cc: OSM - Denver (Attn: Ranvir Singh)
UDWR - Salt Lake City (Attn: Frank Howe)
USFS - Manti LaSal Supervisor's Office, Price (Attn: Terry Nelson)