

## **APPENDIX 3-3**

### **USFWS Correspondence**

Information for Appendix 3-3 is all hard copies no electronic copies exist.

**County Lists of Utah's Federally Listed  
Threatened(T), Endangered(E), and Candidate(C) Species**

| <b>Emery County</b>               |                                       |               |
|-----------------------------------|---------------------------------------|---------------|
| <u>Common Name</u>                | <u>Scientific Name</u>                | <u>Status</u> |
| Jones Cycladenia                  | <i>Cycladenia humilis var jonesii</i> | T             |
| Maguire Daisy                     | <i>Erigeron maguirei</i>              | T             |
| Last Chance Townsendia            | <i>Townsendia aprica</i>              | T             |
| Barneby Reed-mustard              | <i>Schoenocrambe barnebyi</i>         | E             |
| San Rafael Cactus                 | <i>Pediocactus despainii</i>          | E             |
| Winkler Pincushion Cactus         | <i>Pediocactus winkleri</i>           | T             |
| Wright Fishhook Cactus            | <i>Scleroactus wrightiae</i>          | E             |
| Humpback Chub                     | <i>Gila cypha</i>                     | E             |
| Bonytail                          | <i>Gila elegans</i>                   | E             |
| Colorado Pikeminnow               | <i>Ptychocheilus lucius</i>           | E             |
| Razorback Sucker                  | <i>Xyrauchen texanus</i>              | E             |
| Bald Eagle - Breeding             | <i>Haliaeetus leucocephalus</i>       | T             |
| Yellow-billed Cuckoo - Possibly   | <i>Coccyzus americanus</i>            | C             |
| Mexican Spotted Owl               | <i>Strix occidentalis lucida</i>      | T             |
| Southwestern Willow Flycatcher    | <i>Empidonax traillii extimus</i>     | E             |
| Black-footed Ferret - Unconfirmed | <i>Mustela nigripes</i>               | E Extirpated  |



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

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

RECEIVED  
JAN 12 2006

In Reply Refer To  
FWS/R6  
ES/UT  
6-UT-06-001

January 11, 2006

DIV. OF OIL, GAS & MINING

*Incoming*  
*C/007/0013*

Memorandum

To: Reclamation and Enforcement, Regional Director, (Attention: Carl R. Johnston),  
Office of Surface Mining, P.O. box 46667, Denver, Colorado 80201

From: Utah Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Salt  
Lake City, Utah

Subject: Formal Section 7 consultation, UtahAmerican Energy Company, "Lila Canyon"  
Mine, Utah State Permit C/007/0013

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of December 13, 2005 regarding the proposed Lila Canyon Mine in Carbon and Emery Counties. 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.

Depletion to the Upper Colorado River System: Colorado River Endangered Fish Species: Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub:

In accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), and the Interagency Cooperation Regulations (50 CFR 402), the Fish and Wildlife Service (Service) reviewed your correspondence regarding the impacts of the project on endangered Colorado River fishes. The proposed action will cause an average annual depletion of 80.81 acre-feet to the River in the Upper Colorado River Basin.

A Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin (Recovery Program) was initiated on January 22, 1988. The Recovery Program is considered the reasonable and prudent alternative to avoid jeopardy to the endangered fishes by depletions from the Upper Colorado River Basin.

In order to further define and clarify the process in the Recovery Program, a section 7 agreement was implemented on October 15, 1993, by the Recovery Program participants. Incorporated into this agreement is a Recovery Implementation Program Recovery Action Plan (Plan) which identifies actions required to recover the endangered fishes in the most expeditious manner.

Included in the Recovery Program is the requirement that water depletion fees would be paid to help support the Recovery Program. On March 9, 1995, the Service issued an intra-Service biological opinion determining that the depletion fee for depletions of 100 acre-feet or less are no longer required because the Recovery Program has made sufficient progress to be the reasonable and prudent alternative to avoid the likelihood of jeopardy to the endangered fishes and to avoid destruction of adverse modification of their critical habitat by depletions of 100 acre-feet or less. Water depletion associated with this project is authorized under the March 1995 biological opinion. Therefore, the depletion fee for this project is waived.

The Office of Surface Mining should condition their permit to retain jurisdiction in the event that the Recovery Program is unable to implement the Plan in a timely manner. In that case, as long as the lead Federal Agency has discretionary authority over the project, reinitiation of section 7 consultation may be required so that a new reasonable and prudent alternative can be developed by the Service.

The Office of Surface Mining must also report actual annual water depletion from this project to this office at the end of each fiscal year. The Recovery Program maintains water depletion records to ensure that recovery goals are not hindered by excessive depletions.

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.



cc: UDOGM – Coal Regulatory Program, (Attention: Pamela Grubaugh-Littig and Jerriann Ernstsén), 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801  
USFWS - Upper Colorado River Recovery Program (Attn: Angela Kantola), 44 Union Boulevard, Suite 120, Lakewood, Colorado 80228

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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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MAR 02 2006

DIV. OF OIL, GAS & MINING

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

February 28, 20065

Jerriann Ernsten  
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. Ernsten:

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,



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)