

## **APPENDIX 3-3**

### **USFWS Correspondence**

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

INCORPORATED

MAY 13 2007

Div. of Oil, Gas & Mining

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

<u>Emery County</u>			
<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>Sclerocactus 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

Created by the Utah Division of Wildlife Resources - 06/07/2005

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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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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, Utah American 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.

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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

MAY 13 2007

Div. of Oil, Gas & Mining

Incoming

C/007/013

CC: Jerriann

Wayne H.

App 23



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 &amp; MINING

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

February 28, 2006

Jerriann Ernstszen  
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. Ernstszen:

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.

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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)

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United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
2360 WEST ORTON CIRCLE, SUITE 50  
WEST VALLEY CITY, UTAH 84119

In Reply Refer To:  
FWS/R6  
ES/UT  
7-FA-0092

January 22, 2007

Pamela Grubaugh-Littig  
Utah Division of Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
Box 145801  
Salt Lake City, Utah 84114-5801

RE: Lila Canyon Extension of Horse Canyon Mine, Utah American Energy, Inc., Utah State Permit C/007/0013

Dear Ms. Grubaugh-Littig:

This letter conveys the Fish and Wildlife Service (Service) position regarding impacts to migratory birds, specifically golden eagles, from the Lila Canyon extension of the Horse Canyon mine, located in Emery County, near East Carbon and Sunnyside, Utah. Five golden eagle nests are located within approximately 0.5 miles from the surface facility area, and could be subject to disturbance from surface construction activities. In addition, possibly as many as three golden eagle nests are located within the subsidence risk zone and could be impacted by subsidence resulting from underground mining activities.

The Utah Division of Oil, Gas, and Mining (UDOGM) requested (personal communication with Ferriann Ernsten, January 18, 2007) our assistance in order to ensure the proposed project avoids and minimizes take of migratory birds and impacts to their habitat in accordance with the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA). Under authority of the MBTA, it is unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. Take is defined (50 CFR 10.12) as to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. The BGEPA provides additional protection beyond the MBTA, prohibiting disturbance or destruction of bald or golden eagle nests at any time.

We believe that the construction disturbance that is proposed to occur with the mine expansion will not be likely to result in take. We make this determination based on the following commitments that have been agreed upon by the mine operator and the agencies (UDOGM, Bureau of Land Management [BLM], Utah Division of Wildlife Resources [UDWR], and the Service) and will be a requirement of the mining permit issued by UDOGM:

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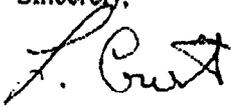
- **Construction Timing** – Construction will not be initiated within 0.5 miles of occupied nest sites during nesting season (February 1 - July 15). Should unforeseen circumstances require that construction be initiated during this period, the mine operator will immediately contact the agencies so that appropriate measures to avoid nest abandonment can be determined. These measures may include but would not be limited to:
  - Development of a mitigation plan;
  - Ground surveys to determine nesting stage;
  - Postponement of construction until eagle nestlings are at a suitable developmental stage.
  
- **Habitat Enhancement** Because the agencies determined that the limiting habitat factor for golden eagles in this area is prey base, the mine operator has committed to 93 acres of habitat enhancement, to be managed by the Bureau of Land Management, to mitigate impacts caused by surface disturbing activities.

The agencies have also discussed the potential for impacts to raptor nest sites related to subsidence that could result from mining activities. Should it be determined that any golden eagle nests are at risk from subsidence, the mine operator will provide, with technical assistance from the agencies, a mitigation plan that will include measures to avoid and minimize the potential for damage to or loss of the nests. The potential need for a Take permit, issued through the Service's Migratory Bird permitting office, would be necessary should the mitigation plan include actions (e.g. fencing or removing the nest) to deter eagles from nesting in an at-risk site.

These measures will provide adequate protection to golden eagle nests while also providing enhancement to habitat components that are currently limiting. In addition, the mine operator has funded and will continue to fund annual fly-over surveys, conducted by the Utah Division of Wildlife Resources, providing data crucial for monitoring this population.

The Service believes that all parties in the project have worked cooperatively to minimize the risk of take of migratory birds as defined by the MBTA and BGEPA, and we appreciate the outstanding coordination.

We commend your efforts to conserve migratory birds, including golden eagles, and their habitat. If you need further assistance, please contact Betsy Herrmann, Ecologist, at the letterhead address or (801) 975-3330, extension 139.

Sincerely,  
  
 Larry Crist  
 Utah Field Supervisor

cc: Steve Rigby - BLM State Office

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MAY 18 2007

Div. of Oil, Gas & Mining