



United States Department of the Interior
FISH AND WILDLIFE SERVICE

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

In Reply Refer To

FWS/R6
ES/UT
04-1018

June 30, 2004

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

RE: Section 7 Consultation on Incidental Boundary Change, Andalex Resources Inc.,
Centennial Mine, C/077/0019

Dear Mr. Haddock:

Based on information provided in your letter of June 16, 2004, below is a list of endangered (E), threatened (T), and candidate (C) species that may occur in the area of influence of your proposed action.

| <u>Common Name</u> | <u>Scientific Name</u> | <u>Status</u> |
|-------------------------------------|---|---------------|
| CARBON COUNTY | | |
| Graham Beardtongue | <i>Penstemon grahamii</i> | C |
| Uinta Basin Hookless Cactus | <i>Sclerocactus glaucus</i> | T |
| Bonytail ^{4,10} | <i>Gila elegans</i> | E |
| Colorado Pikeminnow ^{4,10} | <i>Ptychocheilus lucius</i> | E |
| Humpback Chub ^{4,10} | <i>Gila cypha</i> | E |
| Razorback Sucker ^{4,10} | <i>Xyrauchen texanus</i> | E |
| Bald Eagle ³ | <i>Haliaeetus leucocephalus</i> | T |
| Mexican Spotted Owl ⁴ | <i>Strix occidentalis lucida</i> | T |
| Western Yellow-billed Cuckoo | <i>Coccyzus americanus occidentalis</i> | C |
| Black-footed Ferret ⁶ | <i>Mustela nigripes</i> | E |

³ Wintering populations (only five known nesting pairs in Utah).

⁴ Critical habitat designated in this county.

⁶ Historical range.

¹⁰ Water depletions from any portion of the occupied drainage basin are considered to adversely affect or adversely modify the critical habitat of the endangered fish species, and must be evaluated with regard to the criteria described in the pertinent fish recovery programs.

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DIV. OF OIL, GAS & MINING
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J. Gilliam

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12).

Candidate species have no legal protection under the Endangered Species Act (ESA). Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

Only a Federal agency can enter into formal Endangered Species Act (ESA) 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.

Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Please note that the peregrine falcon which occurs in all counties of Utah was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the Migratory Bird Treaty Act (16 U.S.C. 703-712) which makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs. When taking of migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors, their nests, or eggs, Migratory Bird Permits must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

The following is a list of species that may occur within the project area and are managed under Conservation Agreements/Strategies. Conservation Agreements are voluntary cooperative plans among resource agencies that identify threats to a species and implement conservation measures to proactively conserve and protect species in decline. Threats that warrant a species listing as a sensitive species by state and federal agencies and as threatened or endangered under the ESA should be significantly reduced or eliminated through implementation of the Conservation Agreement. Project plans should be designed to meet the goals and objectives of these Conservation Agreements.

Common Name

Scientific Name

CARBON COUNTY

Colorado River Cutthroat Trout

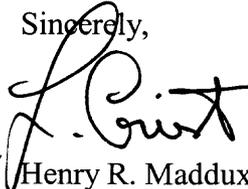
Oncorhynchus clarki pleuriticus

ADDITIONAL COMMENTS:

If the project area contains wetlands or riparian areas, we recommend measures be taken to avoid any wetland losses in accordance with Section 404 of the Clean Water Act, Executive Order 11990 (wetland protection) and Executive Order 11988 (floodplain management) as well as the goal of "no net loss of wetlands." Riparian areas are the single most productive wildlife habitat type in Utah. Riparian vegetation plays an important role in protecting streams, reducing erosion and sedimentation as well as improving water quality, maintaining the water table, controlling flooding, and providing shade and cover. In view of their importance and relative scarcity, impacts to riparian areas should be avoided.

If we can be of further assistance, or if you have any questions, please feel free to contact Diana M. Whittington of our office at (801)975-3330 extension 128.

Sincerely,


Henry R. Maddux
Utah Field Supervisor

cc: UDWR – Price (Attn: Craig Walker)
Office of Surface Mining, (Attn: Ranvir Singh), 1999 Broadway, Suite 3320, Denver,
Colorado 80202