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United States Department of the Interior

FISH AND WILDLIFE SERVICE
UTAH FIELD OFFICE
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WEST VALLEY CITY, UTAH 84119

In Reply Refer To
FWS/R6
ES/UT

May 20, 2002

RECEIVED
MAY 22 2002
DIVISION OF
OIL, GAS AND MINING

Incoming
C/015/015
Copy Susan

Daron R. Haddock, Permit Supervisor
Department of Natural Resources
Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

RE: Section 7 Consultation on 4th East Portal Development, Consolidation Coal Company, Emery Deep Mine, C/015/015-~~D002A~~ D002C, Outgoing File

Dear Mr. Haddock:

In response to your letter dated May 9, 2002, 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.

Common Name	Scientific Name	Status
EMERY		
Barneby Reed-mustard	*Schoenocrambe barnebyi*	E
Jones Cycladenia	*Cycladenia humilis* var. *jonesii*	T
Last Chance Townsendia	*Townsendia aprica*	T
Maguire Daisy	*Erigeron maguirei*	T
San Rafael Cactus	*Pediocactus despainii*	E
Winkler Cactus	*Pediocactus winkleri*	T
Wright Fishhook Cactus	*Sclerocactus wrightiae*	E
Bonytail[4,10]	*Gila elegans*	E
Colorado Pikeminnow[4,10]	*Ptychocheilus lucius*	E
Humpback Chub[4,10]	*Gila cypha*	E
Razorback Sucker[4,10]	*Xyrauchen texanus*	E
Bald Eagle[1]	*Haliaeetus leucocephalus*	T
Mexican Spotted Owl[1,4]	*Strix occidentalis lucida*	T
Western Yellow-billed Cuckoo	*Coccyzus americanus occidentalis*	C
Black-footed Ferret[6]	*Mustela nigripes*	E

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
EMERY	
Colorado River Cutthroat Trout	*Oncorhynchus clarki pleuriticus*

If we can be of further assistance or if you have any questions, please feel free to contact Laura Romin of our office at (801)975-3330 extension142.

Sincerely,

Henry R. Maddux
Utah Field Supervisor