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State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

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November 10, 1999

Chuck Semborski, Environmental Supervisor
Energy West
P. O. Box 310
Huntington, Utah 84528

Re: Conditions Revisited for Deer Creek Mine Permit, PacifiCorp, Deer Creek Mine, ACT/015/018, Folder #3, Emery County, Utah

Dear Mr. Semborski:

The recent Decision Notice and Finding of No Significant Impact document (copy attached) issued by the Manti-La Sal National Forest has prompted us to revisit the Deer Creek Mine Permit and the attached conditions. Condition Number 3 is as follows:

> *Mining in the "North Rilda Lease" area is authorized to the extent that the Surface Managing agency (U. S. Forest Service) has provided consent, per letters dated July 3, 1997 and July 15, 1997 (attached.)*

We recognize that the Forest Service document adds another level of consent to the already issued permit. This letter authorized PacifiCorp to conduct mining in the North Rilda Lease area in accordance with the consent granted in the Forest Service Decision Notice. This includes the conditions identified in the Decision Document. Of course this authorization becomes effective only after the Decision Document has gone through the appeals period and is finalized.

Please keep us apprised of any changes to your mine plan as a result of this action.
If you have any questions, please call me.

Sincerely,

Daron R. Haddock

Daron R. Haddock
Permit Supervisor

tm
Enclosure
cc: Janette Kaiser, USFS
Richard Manus, BLM
Price Field Office
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Deer Creek Mine
North Rilda Extension

ACT/015/018 #2

Decision Notice And Finding Of No Significant Impact

Copy "Daron" PAM & FAX Steve

(Township 16 South, Range 7 East, Sections 20, 21, 28, and 29, Salt Lake Meridian)

USDA Forest Service, Intermountain Region
Manti-La Sal National Forest
Ferron/Price Ranger District
Emery County, Utah

98A Jan. 1997 Any 2/22/99 Volume 11 pg. 18

I. INTRODUCTION

The Manti-La Sal National Forest and Bureau of Land Management (BLM) Price Field Office have prepared an environmental assessment (EA) for a proposal submitted by Energy West Mining Company, Deer Creek Mine. The proposed action is for the cooperating agencies to allow Deer Creek Mine to conduct full extraction longwall mining and subside the escarpments on the north slope of Rilda Canyon by amending their mining and reclamation plan for the North Rilda Canyon vicinity. The Office of Surface Mining also participated as a cooperating agency. The area of the proposal lies on National Forest System lands administered by the Manti-La Sal National Forest, Ferron-Price Ranger District, Emery County, Utah in Township 16 South, Range 7 East, Sections 20, 21, 28, and 29, Salt Lake Meridian.

The preferred alternative for implementation is Alternative 2 (Proposed Action). Alternative 2 is detailed in the EA on page II-1. Alternative 2 would permit Deer Creek Mine to conduct full extraction, longwall mining beneath the Castlegate Escarpment on the north slope of Rilda Canyon, which would lead to surface subsidence and probable rockfalls.

To implement Alternative 2: the Forest Service would consent to, and the BLM would approve, a change to the Resource Recovery and Protection Plan (R2P2), and the Forest Service would consent to, and the Utah Division of Oil, Gas and Mining would approve the amendment to Deer Creek Mine's mining and reclamation plan.

II. DECISION

I have decided to implement Alternative 2 as described in the Environmental Assessment (EA, pp.II-1) and summarized in this document.

I consent to the modification of the R2P2 by the BLM, and consent to approval of the amendment of the Mining and Reclamation Plan by DOGM which would allow Energy West's Deer Creek Mine to conduct full extraction longwall mining and subside the escarpments in the north slope of Rilda Canyon as shown in Appendix A. Conditions of my consent are as follows:

1. Energy West will post warning signs at specified points in Rilda Canyon, warning recreational users of the potential rockfall hazards, as stated in their proposal.

2. All commitments in the mining and reclamation plan will be adhered to.

3. Energy West will also monitor subsidence through their mine plan requirements and provide higher resolution monitoring data for the north slope of Rilda Canyon by providing a complete photographic

record, including before and after photograph sets of the escarpment area; and by installing prisms for accurate surveying on the top of the escarpments to determine when subsidence is substantially complete.

My decision will be implemented through the issuance of this Decision Notice. Forest Service regulations require the permittee to secure any additional state or federal permits or authorizations required by law.

III. RATIONALE FOR THE DECISION

This decision was made after careful consideration of the contents of the Environmental Assessment, public involvement, and the entirety of the supporting record. No one fact or single piece of information led to my decision. Rather, a combination of factors contributed to it. I have summarized some of my key considerations in the following sub-parts.

Relationship to the Purpose and Need:

The general purpose and need for this project is to accomplish the following goal of the Forest Plan: "Provide appropriate opportunities for and manage activities related to locating, leasing, development, and production of mineral and energy resources" (Forest Plan, p. III-4).

The project-specific purpose and need of the proposed action is to maximize coal recovery and extend the mine life. This purpose and need also allows the BLM to achieve maximum economic recovery of coal from the Federal Coal Lease.

My decision wholly meets the project's purpose and need (EA, p. I- 2). Meeting this purpose and need also allows the BLM to meet their responsibility to guarantee that all recoverable coal reserves are identified to achieve maximum economic recovery (MER) of coal.

Relationship to Other Alternatives Considered:

I have also reviewed the other alternative analyzed in the Environmental Assessment (EA, pp. II-1).

Alternative 1 (no action) would not meet Forest Plan direction to "Provide appropriate opportunities for and manage activities related to locating, leasing, development, and production of mineral and energy resources." (Forest Plan, p. III-4), nor would it allow the BLM to meet their responsibility of MER.

Relationship to Existing and Potential Resource Conditions:

I have considered existing resource conditions and potential environmental effects in making this decision (EA, Chapter 3 & 4; Project Record). The design of Alternative 2 and included stipulations will adequately provide for the proposed activity consistent with Forest Service land management direction, and applicable laws and regulations.

Relationship to Public Involvement:

Public comments were sought and considered throughout the planning process for this project (refer to Section V of this document for a summary of public involvement). I have reviewed and considered the issues and concerns identified during the scoping process. My decision considers all public comments received.

Relationship to Laws and Regulations:

My decision is consistent with applicable laws, regulations, and policies (refer to Section VII of this document).

IV. SUMMARY OF ALTERNATIVES CONSIDERED

Two alternatives were considered as part of this project; Environmental Assessment (EA, pp. II-1 - II-2). A summary of the alternatives considered in detail follows.

Alternative 1 - No Action

Forest Service would not consent to the proposed action and mining would continue under the approved R2P2 and MRP. Subsequently, the BLM would not approve the proposed amendment to the R2P2 and DOGM would not approve the corresponding mine permit amendment. Alternative 1 addresses the need to provide a "No Action" alternative (40 CFR 1502.14) and provides a benchmark for evaluating the effects of implementing the proposal. The operator would not be permitted to conduct full extraction longwall mining under the escarpment.

Though full support mining is already permitted under the current mining plan, the reserves would not be economical to mine (personal communication with Chuck Semborski, Energy West Mining Co., June 1999, and George Tetreault, BLM, July 1999). No mitigation measures or monitoring would be required as part of this alternative, beyond what is already in the mining and reclamation plan.

Alternative 2 - Consent to Mining as Proposed

This alternative wholly responds to the purpose and need.

The Forest Service would consent to the modification of the R2P2 by the BLM, and consent to approval of the amendment of the Mining and Reclamation Plan by DOGM which would allow Deer Creek Mine to conduct full extraction longwall mining and subside the escarpments in the north slope of Rilda Canyon as shown in Appendix A.

Additionally, Energy West would post warning signs at specified points in Rilda Canyon, warning recreational users of the potential rockfall hazards, as stated in their proposal. All commitments in the mining and reclamation plan would be adhered to.

The Energy West would also monitor subsidence through their mine plan requirements and as proposed, provide higher resolution monitoring data for the north slope of Rilda Canyon by installing prisms for accurate surveying on the top of the escarpments to determine when subsidence is substantially complete.

These commitments are made in the project proposal and are further identified in the EA (p. II-1).

V. PUBLIC INVOLVEMENT

Internal scoping for this project included review by various Forest Service resource specialists such as the geologist, hydrogeologist, botanist, wildlife biologist, range conservationists, recreation specialist, and landscape architect.

External scoping consisted of notice in the Forest's *Schedule of Proposed Actions*, Legal Notice published in the Sun Advocate (May 5th 1998), a News Release to the Sun Advocate from which an

article was written about the project (May 5th, 1998), and by letter to a 18-person mailing list. Those individuals to whom letters were mailed included: Federal, State, and local governmental or land management entities; adjacent landowners and mining companies; range permittees; and others known to be potentially interested or affected. Three letters were received in response to external scoping. The entirety of these letters can be found in the project record.

The completed EA was released for public comment on July 19th, 1999, and two responses were received, both of which are included in the project file, and are addressed in the EA's "Response to Comments" (EA, Appendix B) included with this Decision Notice. The first response was from Clint Sherman, in the form of a telephone call which was documented by Aaron Howe, Forest Engineer, and the second comment was a letter received from the attorney for Huntington-Cleveland Irrigation Co. These comments and the responses were considered in conjunction with the EA in making this decision.

VI. FINDING OF NO SIGNIFICANT IMPACT

Based on my review of the EA and supporting record, I have determined that this decision does not constitute a major Federal action significantly affecting the quality of the human environment, as defined in the Code of Federal Regulations title 40 part 1508, section 27 (40 CFR 1508.27) in either context or intensity. Therefore, it is my decision that an Environmental Impact Statement is not necessary, and will not be prepared. My rationale for this determination is summarized below.

Context

Locality. Implications of this decision are primarily for the Rilda Canyon area. The effects on public land use and users would remain consistent with that which is currently occurring. (EA, Project Record)

Affected Interests. Affected interests for this project are primarily recreation enthusiasts, State resource management agencies, and other entities with interests in wildlife and water management. (EA, Project Record)

Affected Region. The decision is a site-specific action with impacts primarily to the local area. The context of this decision is comparable to many projects on the Manti-La Sal National Forest and would not measurably affect the region.

Society. No effects are anticipated to society as a whole, though local communities are expected to benefit from the extended life of the mine and associated employment opportunities.

Intensity

1. Consideration Of Beneficial And Adverse Impacts. Consideration of beneficial and adverse impacts has been made in the EA (Chapter 4). Impacts of this decision will be similar to that of past projects involving undermining of escarpment. Although both beneficial and adverse effects are disclosed, none are of enough magnitude to be considered significant.

2. Consideration Of Public Health And Safety. Public health or safety issues concerning this decision were considered through the analysis. The Colorado Rockfall Simulation Program was applied and risks of dislodged rocks reaching the road were established to be very low. Additionally, mitigation in the form of signing has been made a part of the decision to ensure public health and safety (EA, II-1).

3. Consideration Of Unique Characteristics Such As Proximity To Historic Or Cultural Resources, Park Lands, Prime Farmlands, Wetlands, Wild And Scenic Rivers, Or Ecologically Critical Areas. Historic and cultural resources are addressed in the following Item 8. There are no prime farmlands, rangeland, or forest

land as defined in the Secretary of Agriculture's Memorandum Number 1827, Supplement 1, identified on the Forest (Forest Plan, p. II-57). Wetlands would not be affected as this decision requires avoidance of the wetlands as described in the EA. There are no parklands or wild and scenic rivers identified in the Forest Plan. The area of my decision has not been identified by any source as an ecologically critical area (Project File - Biological Assessment and Evaluation).

4. Consideration Of The Degree To Which The Effects On The Quality Of The Human Environment Are Likely To Be Highly Controversial. This decision is not unique, several other projects involving escarpment undermining have been approved over the last 10 years (Trail Mountain Mine, SUFCo Mine). Effects on the quality of the human environment are understood and are not highly controversial. Scoping on the proposed action and solicitation of comments on the Environmental Assessment and pre-decision demonstrated that there is not much public controversy over potential effects. No information or data has been presented to demonstrate that the effects are highly controversial.

5. Consideration Of The Degree To Which The Possible Effects On The Human Environment Are Highly Uncertain Or Involve Unique Or Unknown Risks. This decision is not unique, several other projects involving escarpment undermining have been approved over the last 10 years (Trail Mountain Mine, SUFCo Mine). The Manti-LaSal National Forest has experience in implementing and monitoring similar projects, the effects of which have been found to be reasonably predictable. No effects from this decision would be classified as highly uncertain or involving unique or unknown risks.

6. Consideration Of The Degree To Which The Action May Establish A Precedent For Future Actions With Significant Effects Or Represents A Decision In Principle About A Future Consideration. This decision is not precedent setting.The Manti-LaSal National Forest generally considers and analyzes the permitting of several mine plan amendments or modifications each year. Any future proposals would have to be evaluated on their own merits based on the issues and effects related to the location, timing and intensity of each action.

7. Consideration Of The Action In Relation To Other Actions With Individually Insignificant But Cumulatively Significant Impacts. No reasonably foreseeable future projects have been identified that would in connection with this decision produce cumulative effects beyond those currently occurring. The limited scale of activity creates minimal individual effects, as well as minimal cumulative effects when added to the existing situation and other potential activities.

8. Consideration Of The Degree To Which The Action May Adversely Affect Areas Or Objects Listed In Or Eligible For Listing In The National Register Of Historic Places Or May Cause Loss Or Destruction Of Significant Scientific, Cultural, Or Historical Resources. Record and field reviews indicate that no cultural or historic sites would be affected by this decision (EA, p.III-11 and Project Record).

9. Consideration Of The Degree To Which The Action May Adversely Affect An Endangered Or Threatened Species Or Its Habitat Has Been Determined Not To Be Critical Under The Endangered Species Act. The US Fish and Wildlife Service has been included in the process. A Biological Assessment has been conducted for this decision (Project Record -Biological Assessment and Evaluation). All known endangered or threatened species were considered. The Biological Evaluation concludes that this decision will have "no effect" to listed or proposed species (EA, p. IV-9).

10. Consideration Of Whether The Action Threatens A Violation Of Law Or Requirement Imposed For The Protection Of The Environment. To the best of my knowledge, this decision does not threaten violation of any laws and regulations imposed for the protection of the environment (refer to Section VII of this document).

VII. FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS

To the best of my knowledge, this decision complies with all applicable laws and regulations. In the following, I have summarized the association of my decision to some pertinent legal requirements.

Federal Land Policy and Management Act of 1976: This Act allows the granting of land use permits on National Forest System lands. The regulations at Code of Federal Regulations Title 36 part 251 (36 CFR 251) guide the issuance of permits under this Act. Land use permits are granted on National Forest System lands when the need for such is consistent with planned uses.

National Forest Management Act of 1976: The Forest Plan was approved November 5, 1986, as required by this Act. This long-range land and resource management plan provides guidance for all resource management activities in the Forest. The National Forest Management Act requires all projects and activities to be consistent with the Forest Plan. The Forest Plan has been reviewed in consideration of this project. This decision will be consistent with the Forest Plan.

Potential effects to wildlife resources are also evaluated (EA pp. IV-4 - IV-6), including identified sensitive species, in compliance with the Act direction. "No Impact" or "May Impact Individuals or Habitat, But Not Likely to Contribute to a Trend Towards Federal Listing or Loss of Viability to the Population or Species" determinations were reached for all species analyzed.

Coal Leasing Amendments Act of 1975: Forest Service consent to the conditions of approval is required under this act. This decision document constitutes my consent on behalf of the agency.

Mineral Leasing Act of 1920: The Bureau of Land Management (BLM) is the responsible agency for permitting, under the Mineral Leasing Act of 1920, as amended. The Forest Service, as the surface management agency, must consent to the BLM decisions pertaining to leasing actions or exploration activities. This decision document constitutes my consent on behalf of the agency.

Surface Mining Control and Reclamation Act of 1977(SMCRA): This act gives the Department of the Interior, Office of Surface Mining (OSM), primary responsibility to administer programs that regulate surface coal mining operations and the surface effects of underground coal mining operations. Pursuant to sections 503 and 523 of SMCRA, under the oversight of the OSM, the Utah Division of Oil, Gas and Mining regulates surface coal mining and the surface effects of underground coal mining on Federal and non-Federal lands within the State of Utah. On National Forest lands, consent must be obtained from the Forest Service, as the surface management agency, prior to approval of mining activities, including exploration drilling. This decision document constitutes my consent on behalf of the agency.

National Historic Preservation Act: Compliance with this Act and the American Indian Religious Freedom Act are addressed in Section VI of this document.

Endangered Species Act: Compliance with this Act is addressed in Section VI of this document.

National Environmental Policy Act: The entirety of documentation for this project supports that the project complies with this Act.

VIII. IMPLEMENTATION DATE AND APPEAL OPPORTUNITY

This Forest Service decision is subject to appeal under 36 CFR 215. Permit holders or permit applicants responding to Forest Service issued prospectus who may be affected by this decision have the choice to appeal under 36 CFR 215 or 36 CFR 251.

The Forest Service decision is subject to administrative review by the Regional Forester pursuant to the above cited regulations. Any written appeal must be postmarked or received by the Appeal Deciding Officer within 45 days from the day after publication of the legal notice in the Price *Sun Advocate* newspaper. Appeals should be sent to Regional Forester-Intermountain Region, 324 25th Street, Ogden Utah 84401 on or before December 17th, 1999. Appeals must meet the content requirements of 36 CFR 215.14.

IX. CONTACT PERSON

For additional information concerning this decision, please contact Jeff DeFreest at the Ferron/Price Ranger District (address: 599 West Price River Drive, Price, UT 84501; telephone: 435-637-2817).

X. SIGNATURE AND DATE

JANETTE S. KAISER
Forest Supervisor (Responsible Official)
Manti-La Sal National Forest

Date 11-1-99

October 1999

RESPONSE TO COMMENTS
Deer Creek Mine
North Rilda Extension
Environmental Assessment
APPENDIX B

Introduction:

The Environmental Assessment was released for public comment on July 19, 1999. There were two parties that responded with formal comments.

The first of which was in the form of a telephone call from Mr. Clint Sherman of Cleveland Utah and documented by Aaron Howe, Forest Engineer.

The second comment received was in the form of a letter from the law firm of Nielsen and Senior on the behalf of Huntington-Cleveland Irrigation Company.

Comments and Response to Comments:

A. Phone Call with Clint Sherman:

Comment:

Mr. Sherman apparently uses the mid to upper portion of this area (adjacent to escarpment) in the spring time and is concerned that falling rock could land on him as he collects antlers or that rocks may land or roll into the road.

Response:

Warning signs are to be installed by the Energy West at extents of the project area advising recreational users of the potential for rockfalls near the escarpment.

The rockfalls are not expected to reach the road. The Colorado Rockfall Simulation Program was applied to the proposed subsidence area (project file) and the analysis does not show any rocks reaching the road. If rocks would reach the road, the mine would attend to removing them.

Comment:

Mr. Sherman is concerned about the potential for the falling rock to displace the elk that winter adjacent to the escarpment.

Response:

The escarpment would not all fail at once because the mining progresses rather slowly and the elk should not move out of the area due to periodic rock falls.

Comment:

Mr. Sherman was concerned about the potential for the Rilda (canyon) road to be closed (administratively) during the subsidence period.

Response:

Administrative closure of the road was not part of the proposal or required mitigations. It should also be noted that the Rilda Canyon Road is a county road and that Emery County would have to make a decision to restrict use up the canyon.

B. Nielsen & Senior Letter:

Comment:

"The EA at page I-3 recognizes water resources may be impacted, but then attempts to down play the importance of a single known seep within the project area."

Response:

The EA identifies one seep near the eastern end of the project area. The EA describes this feature on page I-3 and indicates that the "seep (no live surface water) near the eastern end of the project area on the ridge between Rilda and Mill Fork Canyons" is "too small to be developed for a water source." It is further discussed in the EA on page IV-4, "The seep on the ridge could be altered as a result of mining and subsidence leading to corresponding vegetation changes.". Subsidence/alteration of this seep is expected to result in the seep location migrating down-dip but no diminishment of flow is anticipated.

Comment:

"It is also unclear whether the project area and adjacent areas were carefully surveyed for additional seeps and springs."

Response:

The area has been carefully surveyed for seeps and springs. PacifiCorp initially conducted the East Mountain Spring and Seep Surveys during the 1979 and 1980 field seasons. Additionally, in cooperation with the NEWUA and Huntington Cleveland Irrigation Company, PacifiCorp conducted a comprehensive hydrologic investigation of the Rilda Canyon Springs during 1989. Further analysis was conducted by PacifiCorp as part of their Mining and Reclamation Plan for the North Rilda Permit area (Deer Creek MRP, Vol. 11, approved July 1997).

Comment:

"Additionally, the relationship between groundwater in the project area and the springs utilized by NEWUA is not adequately addressed."

Response:

The relationship is identified on page III-2 of the EA. "The springs are fed by the alluvial system in Rilda Creek and the majority of their recharge is from springs at the head of Rilda Canyon, west of the project area. A north-south fracture system is also thought to partially feed the NEWUA springs." Potential impacts to the springs are identified in Chapter 4 under each alternative considered.

Alternative 1 (No Action)

"The north-south fracture system thought to be partially feeding the NEWUA springs could be altered by full support mining authorized by the current MRP and R2P2."

Alternative 2 (Preferred)

"Any unforeseen damage to permitted facilities on National Forest System lands would be required to be repaired under the existing lease stipulations. Likewise, water loss (quality or quantity) would require replacement, and damages done to stream and riparian environments would also be repaired by the mine under their existing mining and reclamation plan."

"The north-south fracture system thought to be partially feeding the NEWUA springs could be altered by full support mining authorized by the current MRP and R2P2 or by the action alternative allowing longwall mining and subsequent subsidence."

"The seep on the ridge could be altered as a result of mining and subsidence leading to corresponding vegetation changes."

Recent information from Chuck Semborski (project file) pertaining to the presence of the north-south fracture system indicates that "mining has not encountered any structural anomalies along the proposed north-south trend and interception of ground water has been minimal". This information is based on their development mining of the length of Rilda Ridge in the already permitted 4 panels north of the project area considered in this EA and decision. There is no reason to believe that the fracture system would be encountered mining the two panels to the south included in this project area.

Comment:

"While the EA acknowledges the Springs in Rilda Canyon that provide drinking water for those served by North Emery Water Users Association ("NEWUA"), it fails to recognize the holder of the water rights under which NEWUA receives its water."

Response:

NEWUA is the Special Use Permit holder for the subject springs in Rilda Canyon for the authorized purpose of providing culinary water. The specific ownership of the water is not germane to this analysis, though it is recognized that Huntington-Cleveland Irrigation Company does hold the water rights and NEWUA receives their water from Huntington-Cleveland Irrigation Company. Potential impacts to the water resources are considered regardless of who the specifically owns the water rights.

Comment:

"Tellingly, there is not a single hydrologist on the interdisciplinary team."

Response:

Liane Mattson (former Hydrogeologist on the Manti-LaSal NF) was involved with the review of the submittal (proposal) from Deer Creek Mine, has been involved with numerous hydrological studies in the vicinity, and participated in the preparation and review of this Environmental Assessment as an extended IDT member. Her name was inadvertently left off of the EA.