



United States Department of the Interior  
FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE  
LINCOLN PLAZA  
145 EAST 1300 SOUTH, SUITE 404  
SALT LAKE CITY, UTAH 84115

In Reply Refer To  
FWS/R6  
ES/UT

July 13, 2001

Carter Reed  
Manti-La Sal National Forest  
Supervisor's Office  
599 West Price River Drive  
Price, UT 84501

*Copy Susan* (2-sided)  
*[Redacted]*  
*[Redacted]*

Dear Mr. Carter:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of June 21, 2001 announcing your intent to issue a Categorical Exclusion on the proposed modification of Federal Coal Lease U-06039. The purpose of the modification is to allow underground access from the Deer Creek Mine permit area to the Mill Fork State Lease Tract #ML-48258 and potential mining of minor coal reserves. This project will be subject to lease stipulations already contained in the existing lease, including those to prevent subsidence of perennial drainages and reservoirs. We are providing the following comments for your consideration in your analysis.

In Section 1 of this letter we convey our concerns that should be addressed in the NEPA compliance document for this project. Section 2 of this letter addresses your responsibilities under section 7 of the Endangered Species Act (ESA) of 1973, 16 U.S.C. § 1536.

Section 1.

Raptor activities such as foraging and nesting may be present in the area being considered for this lease. In analyzing the lease modification, we recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* (Romin and Muck, 1999) 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.

We recommend that your evaluation of the lease modification include appropriate mitigation for any unavoidable detrimental impacts.

Section 2. Federal agencies have specific additional responsibilities under Section 7 of the ESA. To help you fulfill these responsibilities, we are providing an updated list of threatened (T) and endangered (E) species that may occur within the area of influence of your proposed action. Although the proposal indicates there will be no surface disturbance, there may be potential for water depletions. Our list is limited to those species that may be affected by a depletion.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
EMERY		
Bonytail <sup>4</sup>	<i>Gila elegans</i>	E
Colorado Pikeminnow <sup>4</sup>	<i>Ptychocheilus lucius</i>	E
Humpback Chub <sup>4</sup>	<i>Gila cypha</i>	E
Razorback Sucker <sup>4</sup>	<i>Xyrauchen texanus</i>	E

T = threatened  
E = endangered

<sup>1</sup>Nests in this county of Utah.

<sup>4</sup>Critical habitat designated in this county.

<sup>6</sup>Historical range.

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.

Any water depletions from the Upper Colorado River Basin are considered to jeopardize the continued existence or adversely modify the critical habitat of the four Colorado River endangered fish species: Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub. However, for new depletions less than 100-acre feet, an intra-service agreement based on basin-wide cumulative depletions precludes the need for a depletion charge and the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin activities are considered to offset depletion impacts. Therefore, the FS should monitor and document any water depletions associated with this project and determine if further consultation is required with this office. Please note that the Service is required to consult on and keep track of all depletions, historic or new, of any magnitude. The FS should report all water depletions to our office.

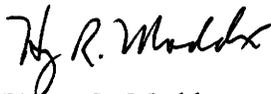
Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action "may affect and is likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service 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).

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. Migratory Bird Permits may be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

We appreciate the opportunity to provide these comments. If you need further assistance, please contact Diana Whittington, Ecologist, at the letterhead address or (801) 524-5009, ext. 128

Sincerely,



Henry R. Maddux  
Utah Field Supervisor

cc: UDWR - SLC  
UDOGM - SLC  
BLM - SLC