



# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

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January 28, 2002

TO: Internal File

THRU: James D. Smith, Senior Reclamation Specialist/Hydrologist/Team Lead *JDS*

FROM: Susan M. White, Senior Reclamation Specialist/Biologist *SMW*

RE: Mill Fork Lease Permit Extension, Energy West Mining Inc. PacifiCorp, Deer Creek Mine, C/015/018 PM01I

## SUMMARY:

The Division received an application to extend the Deer Creek Permit area into the Mill Fork Lease. This memo reviews the October 29, 2001 submittal that was determined administratively complete on December 18, 2001. This memo reviews the application for technical adequacy. The application contains deficiencies that must be addressed prior to approval.

## TECHNICAL ANALYSIS:

## GENERAL CONTENTS

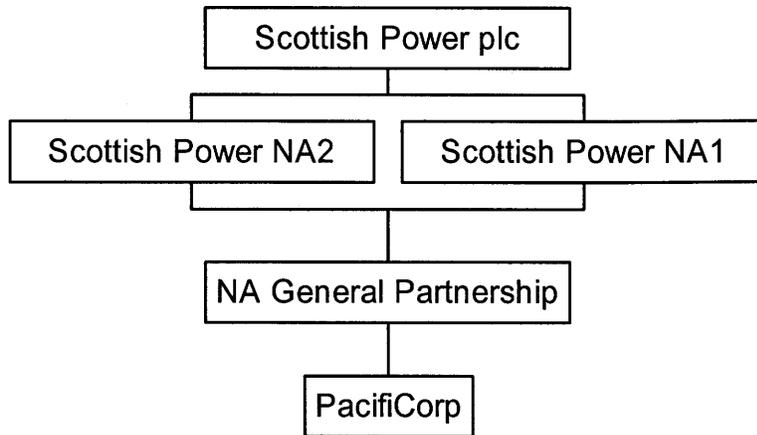
### IDENTIFICATION OF INTERESTS

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

### Analysis:

The applicant is PacifiCorp, an Oregon corporation. All stock of PacifiCorp is owned by NA General Partnership, a Nevada General Partnership. Scottish Power NA1 Limited and Scottish Power NA2 Limited make up NA General Partnership and Scottish Power plc own both of these identities. Energy West Mining Company, a wholly owned subsidiary of PacifiCorp is the operator. Ownership and control information with names of officers and directors is in Appendix A (list is current as of December 2000). The organization is diagramed below.

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The application gives the name, address and telephone number of the applicant and operator (page 2). The resident agent is identified as Charles Semborski. Employer I.D. Number is 93-0246090 for PacifiCorp and 87-0246090 for Energy West Mining. PacifiCorp will pay the abandoned mine reclamation fee (page 1-2). The names, addresses, permit numbers, regulatory authorities, and MSHA numbers together with dates of issuance for coal mining and reclamation operations owned or controlled by the applicant is found in section R645-301-112.400.

The table titled Deer Creek Mine – Underground Right-of-Entry Information with Cited Surface and Subsurface Ownership list surface and subsurface owners of record together with the right of entry information of the area to be mined and is shown on maps MRS1838D and MFU1837D. The maps show adjacent property owners. R645-301-112.600 requires the name and address of each owner of record of all property contiguous to any part of the permit area. The addresses of IPA, Craig Johansen, Kirk & Julie Johansen, and Etal Jensen need to be included on page 1-20. Map MFS1838D, subsurface coal ownership, shows a fee parcel under lands owned by Dick and Quinevere Nielson but does not state the owner of the fee coal.

There are no holders of record of any leasehold interest in areas effected by surface operations of facilities or coal to be mined other than oil and gas leases and grazing permits.

After this permit modification is approved but prior to reissuing the permit, the Permittee must update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

**Findings:**

Information provided in the application is not considered adequate to meet the minimum Identification of Interests section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-112.600**, The addresses of IPA, Craig Johansen, Kirk & Julie Johansen, and Etal Jensen need to be included on page 1-20. Map MFS1838D, subsurface coal ownership, shows a fee parcel under lands owned by Dick and Quinevere Nielson. The owner of the fee coal must be provided.

**R645-301-112.900**, After this permit modification is approved but prior to reissuing the permit, the Permittee must update, correct or indicate that no change has occurred in the information previously submitted under R645-301-112.100 through R645-301-112.800.

## **VIOLATION INFORMATION**

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

### **Analysis:**

The NOV information found in Appendix B of Section R645-301-113 Violation Information is dated December 2000. This appendix must be updated with a list of all violation notices received by the applicant during the three year period preceding the application date.

### **Findings:**

Information provided in the application is not considered adequate to meet the minimum Violation Information section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-113.300**, Violation Information is dated December 2000. This appendix must be updated with a list of all violation notices received by the applicant during the three year period preceding the application date.

## **RIGHT OF ENTRY**

Regulatory Reference: 30 CFR 778.15; R645-301-114

### **Analysis:**

The Forest Service owns the surface lands in the Mill Fork Lease and SITLA is the subsurface coal owner. The specific right of entry document is State Coal Lease ML 48258, Issued on April 1, 1999 to PacifiCorp (page 1-19). An Environmental Assessment for this lease was prepared by the Manti-La Sal National Forest and the Bureau of Land Management for this lease dated, June 1997 and titled, Mill Fork Federal Coal Lease Tract UTU-71307 Environmental Assessment Lease-By-Application No. 11 (EA).

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The permit area addition adds 5,562.82 acres to the existing permit area of 19075.7 acres for a total of 24,638.52 acres. The table titled Deer Creek Mine – Underground Right-of-Entry Information with Cited Surface and Subsurface Ownership lists the total right-of-entry acres as 23,625.37. This acreage figure does not match the Division's. Please correct the acreage to correspond to the acreage decided in an e-mail between Chuck Semborski and Pamela Grubaugh-Littig, dated January 15, 2002.

**Findings:**

Information provided in the application is not considered adequate to meet the minimum Right of Entry section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-121.100**, Please correct the acreage to correspond to the acreage decided in E-mail between Chuck Semborski and Pamela Grubaugh-Littig, dated January 15, 2002.

**LEGAL DESCRIPTION AND STATUS OF UNSUITABILITY CLAIMS**

Regulatory Reference: 30 CFR 778.16; 30 CFR 779.12(a); 30 CFR 779.24(a)(b)(c); R645-300-121.120; R645-301-112.800; R645-300-141; R645-301-115.

**Analysis:**

Maps MRS1838D and MFU1837D show the new permit area and a legal description is found in Appendix E. A statement is provided that after consultation with state and federal agencies, no lands within or adjacent to the permit area have been identified as qualifying under R645-103-300 as areas unsuitable for surface effects of underground coal mining activities (page 1-22).

**Findings:**

The information provided in the application meets the minimum Legal Description and Status of Unsuitability Claims requirements of the regulations.

## **PUBLIC NOTICE AND COMMENT**

Regulatory References: 30 CFR 778.21; 30 CFR 773.13; R645-300-120; R645-301-117.200.

### **Analysis:**

Appendix D contains a copy of the proposed public notice. This notice must be replaced with a copy of the actual publication. The Public Notice must contain:

1. Name and business address of applicant
2. Map or description of permit area
3. Location of where permit application is available for public review
4. Name and address of Division for comments

### **Findings:**

Information provided in the application is not considered adequate to meet the minimum Public Notice and Comment section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-117.200**, The draft public notice must be replaced with a copy of the actual publication showing four consecutive weeks of publication.

## **PERMIT APPLICATION FORMAT AND CONTENTS**

Regulatory Reference: 30 CFR 777.11; R645-301-120.

### **Analysis:**

The Table of Contents in the Engineering section is missing a list of maps.

### **Findings:**

Information provided in the application is not considered adequate to meet the minimum Permit Application Format and Contents section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-121**, The Table of Contents in the Engineering section must provide a list of maps.

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## ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

## HISTORIC AND ARCHEOLOGICAL RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.12; R645-301-411.

### Analysis:

An historic and archeological resource evaluation was conducted in the Mill Fork area in 1995 by AERC. A stratified sample or Class II survey was the survey method used. This survey actually sampled 15 percent of the lease area. No significant resources were found. Two nonsignificant prehistoric lithic scatter, no historic and no paleontological resources occur on the lease area. The EA states that the 2 nonsignificant prehistoric sites were found in the Star Point Sandstone and not in the Castlegate Sandstone. The Star Point Sandstone is not likely to be effected by subsidence.

The EA lists several mines and access roads in areas surrounding the lease area developed in the late 1930's and 1940's. The old mines include the Tip Top, Old Leamaster, Johnson, Comfort, Rominger, and Helco Mines. A gas field to the southwestern of the lease area was developed in the 1950's. One well lies within the proposed permit area. No evaluation of the historic significance of these mines and gas field is provided in the MRP. No effects of subsidence are expected to occur on these sites.

**A letter has been sent to the State Historic Preservation Officer (SHPO). No reply has been received. The findings may change pending the response in the SHPO letter.**

### Findings:

The information provided in the application meets the minimum Historic and Archeological Resource Information requirements of the regulations.

## VEGETATION RESOURCE INFORMATION

Regulatory Reference: 30 CFR 783.19; R645-301-320.

### Analysis:

The biology section of the application uses resource information taken from the Data Adequacy document and the EA.

R645-301-300 Biology, section of the MRP describes the diversified topography, complex habitats and vegetation in terms of ecosystems and uses the classifications of conifer ecosystem, aspen ecosystems, transitional ecosystems and pinyon-juniper ecosystems and two vegetation communities which are: mountain brush and sagebrush grasslands. Vegetation types in the Mill Fork Lease area are described on the vegetation map (Drawing #: MFS1821B) as Aspen, Conifer, Conifer-Aspen, pinyon juniper-mountain brush, aspen-conifer, conifer-sagebrush-grass, and sagebrush-grass.

The MRP describes the transitional ecosystem as various vegetation types that resulted after a fire about 25 years ago. The fire covered a large portion of the Mill Fork area and likely prior to recent man's attempt to control fire this area was in a fire cycle so climax communities have never been defined in the Mill Fork area. The vegetation communities comprising the transitional ecosystems are the predominant communities in this area.

**Findings:**

The information provided in the application meets the minimum Vegetation Resource Information requirements of the regulations.

**FISH AND WILDLIFE RESOURCE INFORMATION**

Regulatory Reference: 30 CFR 784.21; R645-301-322.

**Analysis:**

The Mill Fork area contains portions of Crandall Creek and is a watershed for Little Bear, Mill Fork, and Right Fork of Rilda Creek. These are all tributaries to Huntington Creek. The western portion of the area is a watershed to Indian Creek. All of these named creeks contain fish and are important fisheries. The permit application states that genetic testing is currently being done to see if the Colorado cutthroat (Forest sensitive species list) population in Crandall Creek drainage is pure. This information should be available and included in the application.

A large portion of the permit area contains critical deer and elk summer range and areas that are not critical summer range are critical or high value winter range (Drawing #: MFS1822B and MFS1849B).

A survey for the spotted bat (Forest sensitive species list) and Townsend's big-eared bat was completed in the existing permit area and lease area (Appendix A). Results found no Townsend's big-eared bats. Spotted bats found were solitary and evenly spaced over foraging habitat (lower elevations off the lease area). Roosting sites can be found within lease area and throughout the Huntington drainage in suitable cliffs. The study concludes that by looking at

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areas that have already been mined cliff failures have not dramatically impacted resident populations. Spotted bats are "common" enough throughout the area that localized cliff failure does not pose a serious threat to the population. The dates and year of the bat study was not provided.

The coal lease is stipulated that SITLA in cooperation with the Forest Service, may impose mitigation on the lose of spotted bats. The mitigation may include avoidance during specific times and /or the prevention of bat occupancy during periods of subsidence, such as by netting or screening (Stipulation #20).

A statement is provided in the MRP that no threatened or endangered species of plants or animal inhabit the Mill Fork area (section R645-301-322.210. Threatened and Endangered Species). No basis is given for this statement. The source of this statement and name of a professional qualified in this area must be provided to support the statement.

The MRP must discuss the potential for the presence of the Mexican spotted owl. DWR in a meeting with the Division and USFWS discussed the potential for Mexican spotted owl in Utah. Potential habitat was discussed in terms of vegetation, slope, elevation and curvature as follows:

- Vegetation - mixed conifer, P-J, tends towards wooded but not always, fewer but larger trees
- Slope - 60 to 80%, minimum 40%
- Elevation - less than 8000', if greater than 8000' only mixed conifer (Douglas fir mix)
- Curvature - canyons, branches off of main canyons, steep walls, cooler north aspects

Potential or no potential habitat for the lease area should be discussed in the MRP for presence or absence of the four factors that determine habitat.

The EA states that habitat for three sensitive plant species may occur within the lease area. The MRP must discuss the potential presence of Carrington daisy, canyon sweetvetch, and Maguire campion. Additionally, Heliotrope milkvetch, a threatened species occurs on the same flagstaff limestone outcrops as the Carrington daisy and Maguire campion, but in San Pete County. San Pete County is close to the permit area and this species must be addressed in the MRP.

A query to the Utah Natural Heritage program identified the Link Canyon columbine occurring adjacent to the proposed permit area in Little Bear Canyon. This plant is a Forest sensitive species and should be addressed in the MRP.

**A letter to the USFWS has been sent requesting a list of threatened and endangered species that might occur in the lease area. This list has not been received. After the list is received the potential for each species to be in the area will need to be evaluated in the MRP. Additional information will be required.**

There are 3 golden eagle nests in the lease area. One coal seam will be mine under one of the nests in 2012. This nest is located in T16 S. R6 E sec. 1 SE1/4.

**Findings:**

Information provided in the application is not considered adequate to meet the minimum Fish and Wildlife Resource Information section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-131**, All technical data must be accompanied by the dates of the data collection. Provide the dates of data collection and analysis for the bat studies.

**R645-301-132**, Analyses will be under the direction of a professional qualified in threatened and endangered species. The name and qualifications of this qualified person must be provided in the MRP.

**R645-301-322**, the MRP must discuss the potential for the presence or absence of the Mexican spotted owl.

**R645-301-322**, the MRP must discuss the potential for Link Canyon columbine, heliotrope milkvetch, Maguire campion, Carrington daisy, and canyon sweetvetch occurrence in the proposed permit area.

**LAND-USE RESOURCE INFORMATION**

Regulatory Reference: 30 CFR 783.22; R645-301-411.

**Analysis:**

The Mill Fork lease area land use is primarily grazing, wildlife and recreation. Other uses in the area are gas production. Currently there is one producing well and plans for future gas development. A pipeline for the one gas well follows Forest Road 244 off the permit area. Utah Power and light has a ROW for a 345 KV power transmission line and another line for the Genwall, Crandall Canyon Mine. The Flat Canyon road enters and leaves the southwest portion of the permit area.

**Findings**

The information provided in the application meets the minimum Land Use Resource Information requirements of the regulations.

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**MAPS, PLANS, AND CROSS SECTIONS OF RESOURCE INFORMATION**

Regulatory Reference: 30 CFR 783.24, 783.25; R645-301-323, -301-411, -301-521, -301-622, -301-722, -301-731.

**Analysis:**

**Vegetation Reference Area Maps**

Vegetation map, Drawing #: MFS1821B, designates the vegetation types within the Mill Fork Lease area. No vegetation in areas adjacent to the permit area are shown as usually required by the Division. Prior to approval, and after submittal of information required by deficiencies found in Fish and Wildlife Resource Information the Division may require areas adjacent to the permit to be mapped.

**Findings:**

The information provided in the application meets the minimum Maps, Plans, and Cross Sections of Resource Information requirements of the regulations.

**OPERATION PLAN**

**FISH AND WILDLIFE INFORMATION**

Regulatory Reference: 30 CFR Sec. 784.21, 817.97; R645-301-322, -301-333, -301-342, -301-358.

**Analysis:**

**Protection and Enhancement Plan**

Second mining is expected to occur under the Castlegate Sandstone escarpments on the east side of the permit area. This has caused cliff failure and rock falls in other areas mined in the Deer Creek permit area (section R645-301-525. Subsidence Control Plan). The Pre-Subsidence Survey Map (MFS-1839D) shows the Castlegate Sandstone out crops. Escarpments on the Joes Valley side will be protected from subsidence.

The application states on page 3-10 and 3-11, that experience from the existing PacifiCorp permit areas has shown that the effects of subsidence on grazing and grazing lands, timber resources (not identified as a land use) or access to timber resources, wildlife resources are minimal. No data or qualified person has been attributed to these statements. Data must be provided or the name and qualifications of the person making the statement must be provided.

### **Endangered and Threatened Species**

An analysis of the operational effects of underground mining on threatened, endangered, and sensitive plant and animal species found within the permit area is required.

#### **Bald and Golden Eagles**

No protection plan has been provided in the MRP for the golden eagles in the proposed permit area. Page 5-22 of the application states that cliff escarpment failure could occur in section 1 where an eagle nest is located. The MRP must describe the protection measures to be used and continued resource information gathering such as annual raptor monitoring as part of the plan.

#### **Findings:**

Information provided in the application is not considered adequate to meet the minimum Fish and Wildlife Information section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-130**, Data must be presented to support the statement in the application that experience from the existing PacifiCorp permit areas has shown that the effects of subsidence on grazing and grazing lands, timber resources or access to timber resources, wildlife resources are minimal. No data or qualified person has been attributed to these statements. Data must be provided or the name and qualifications of the person making the statement must be provided.

**R645-301-333**, A statement must be provided concerning the operational effects of underground mining on the threatened, endangered, and sensitive plant and animal species found within the permit area.

**R645-301-333.300**, The MRP must describe the protection protective measures and continued resource information gathering for golden eagles.

### **VEGETATION**

Regulatory Reference: R645-301-330, -301-331, -301-332.

#### **Analysis:**

Specific information concerning the effects of underground coal mining operations on rare and sensitive plant species if found under the Fish and Wildlife Information section.

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In order to mitigate any impacts to vegetation from subsidence the impacts must be located, measured and quantified. A monitoring system must be described in the MRP that will record change over time of the vegetation. This is also a lease requirement described as Forest Service Stipulation #7. The Forest Service, in past PacifiCorp leases, has allowed color infrared photographs at five year intervals to be used as a method to monitor potential vegetation change over time.

**Findings:**

Information provided in the application is not considered adequate to meet the minimum Vegetation section of the regulations. Prior to approval, the Permittee must provide the following in accordance with:

**R645-301-332**, A monitoring system must be described in the MRP that will record any vegetation change over time from subsidence.

**RECOMMENDATION**

The application should not be approved until the above identified deficiencies are resolved.