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

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February 6, 2003

OK

Henry Maddux, Field Supervisor
U.S. Fish and Wildlife Service
2369 West Orton Circle
West Valley City, Utah 84119

Re: Section 7 Threatened and Endangered Species Consultation for the SITLA Lease ML-48258 Mill Fork Lease Extension; PacifiCorp, Deer Creek Mine, C/015/018-PM01I-2, Outgoing File

Dear Mr. Maddux:

The Division of Oil, Gas and Mining is planning to process the Mill Fork Lease by end of next week. The proposed lease is for an additional 5563 acres that are located between Huntington Canyon and Indian Creek in Emery County. The Division requests USFWS to review the Division's opinions (*italics*) of the mine operator's discussion concerning potential threatened, endangered, and sensitive species in the area. We would appreciate a memo from USFWS stating either concurrence or no concurrence to each of the Division's opinions as soon as possible.

The Division evaluated the mine operator's discussion of potential threatened, endangered, and sensitive species in the area. The species discussed are the following:

- Four fish species
 - Colorado pikeminnow,
 - humpback chub
 - bonytail chub
 - razorback sucker
- Raptor species
 - Golden Eagle and other raptor species
 - Mexican Spotted Owl

The USFWS states that water consumption by underground coal mining operations could jeopardize the continued existence of or adversely modify the critical habitat of the Colorado River endangered fish species. The mine operator addressed potential adverse effects to the four fish species as a result of mining operations in a letter dated December 4, 2002. Calculations of water consumption and gain show that the net total is estimated to be a net gain of 2,453 acre-

feet. Although the derivation of the net acre-feet or related content is not included in the MRP as requested by the Division (R645-301-333), the Division expects that Energy West will address the finding. *It is the Division's opinion that there will be minimal or no adverse affect on these four fish as a result of mining operations because the mine operator predicts no net loss of water contributed to the Colorado River.*

In May, the DWR conducts a raptor survey of the mine permit area and surrounding area. The results show there are 3 golden eagle nests (78, 1210, and 1211) within the Mill Fork lease area. Two red tail hawk nests and several eagle nests are adjacent to the lease area. The current mine plan shows that for nests 1210 and 1211 one coal seam may be mined under the nests, but subsidence is not predicted to occur within 0.5 mile of these nest sites. The plan also shows that for nest 78 no coal seam will be mined under the nest, but subsidence is predicted to occur within the 0.5 mile protection zone of the nest site. Nest 78 was surveyed as active in 1998 and either tended or inactive since 1999.

The results of the raptor survey also show that there are other raptors near the Mill Fork Lease area, such as the Goshawk, red-tailed hawk, sharp shinned hawk, American kestrel, and great horned owl. Although these species were spotted, nesting sites were not spotted within the mine permit area.

Annual raptor monitoring of the mine permit area will continue. PacifiCorp will consult with the Division to discuss avoidance, mitigation, and impacts (page 3-7) prior to mining. Furthermore, there are outcrops in the first long wall panel that could potentially contain raptor habitat. These outcrops are on the western side of the lease area along the Joes Valley Fault and have not been surveyed for several years. The Division in consultation with DWR and USFWS is requiring this area be surveyed for raptors prior to longwall mining. *It is the Division's opinion that there will be minimal or no adverse affect to the raptors of concern as a result of subsidence because of the following:*

- *Golden Eagles*
 - *Subsidence is unlikely to occur near nests 1210 and 1211*
 - *Subsidence may occur within the western edge of 0.5mile protection zone of nest 78, but not reach the actual nest site*
- *Other raptor species have not been surveyed to have nests within the mine permit area*
- *Mine operator agrees to*
 - *Continue annual raptor surveying*
 - *Consult with the Division to discuss avoidance, mitigation, and impacts prior to mining operations.*

The mine operator discusses the habitat requirements for the Mexican Spotted Owl (MSO) and provides a summary of research on potential habitat within the permit area and the adjacent lands. Dr. Willey modeled the Mill Fork least tract area for MSO foraging and nesting

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habitat. The results show that potential nesting habitat is not within the Mill Fork permit area, but exists north and east of the permit area. The results also show discrete parcels of foraging habitat located in the far southwestern corner, and along the mid-eastern and northeastern boundaries of the permit area.

One of the concerns of the Division is the level of disturbance from subsidence to foraging and nesting habitat. The mine operator states that there is approximately 1.6 acres of the far southwestern corner potential foraging habitat that could be impacted by mining-induced subsidence (pg 3-13). This acreage is described as including aspen and Douglas fir forests, but not including cliffs ledges. There may not be cliff ledges within this modeled area, but nearby there is a barren rock outcrop/ledge as shown on the vegetation map near EM-174. Both the foraging habitat and the nearby rock ledge in the far southwestern corner are located less than 500' from the predicted subsidence zone. The mine operator states that disturbance to the foraging habitat will be negligible. *The Division supports that there will be minimal or no adverse affect on the MSO as a result of subsidence because of limited nesting or foraging sites within the permit area.*

As mentioned above, the Division is planning to process this lease by the end of next week. The Division values your comments and appreciates your prompt reply.

If you have any questions about this project, please call me at (801) 538-5325 or Jerriann Ernstsens at (801) 538-5214.

Sincerely,



Daron R. Haddock
Permit Supervisor

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cc: Price Field Office
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