

0015



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
<http://www.blm.gov>



cc. PJK ✓
Mary Ann
Daron

IN REPLY REFER TO:
3480
(UT-923)

FEB 11 2004

Peter Rutledge, Chief Support Division
Western Regional Coordinating Center
Office of Surface Mining (OSM)
P.O. Box 46667
Denver, CO 80201-6667

OPTIONAL FORM 99 (7-99)

FAX TRANSMITTAL

of pages ▶ 13

To <i>DAM</i>	From <i>STAN</i>
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7000 5099-101 GENERAL SERVICES ADMINISTRATION

RE: Federal Mining Plan approval Recommendation response for [PacifiCorp "Deer Creek" Mine – Application for Permit Revision, North Rilda Facilities Area].

Dear Mr. Rutledge:

In your letter of January 28, 2004, you requested that we provide a formal response on the Bureau of Land Management's (BLM) recommendation whether the North Rilda Facilities permit revision meets the requirements of 30 CFR 746.18(d) and would be considered to be a mining plan modification that would require approval by the Assistant Secretary, Lands and Minerals. We have reviewed the plan and prior approvals for the Deer Creek Mine permit and have compiled our review in the enclosed internal memorandum which discusses each of the criteria in detail

In your earlier determination, OSM indicated that the proposal would be considered to be a mining plan modification because the action would require the preparation of an environmental impact statement (EIS) as provided in 30 CFR 746.18(2)(d)(5). BLM does not agree with this determination. We have carefully reviewed the proposal and existing environmental guidance and can find nothing to support requiring an EIS. However, the federal coal leases where the proposed facilities would be constructed include the following stipulation:

"The limited area available for mine facilities at the coal outcrop, steep topography, adverse winter weather, and physical limitations on the size and design of the access road are factors which will determine the ultimate size of the surface are utilized for the mine. A site specific environmental analysis will be prepared for each new mine site development and for major modifications to existing developments to examine alternatives and mitigate conflicts (emphasis added)".

To be consistent with the terms of the federal coal lease issued under the Mineral Leasing Act (MLA), the approval of a permit revision for new surface facilities would appear to require some

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DIV. OF OIL, GAS & MINERALS

level of environmental analysis. BLM believes that under the provisions of the Utah Cooperative agreement outlined in 30 CFR 944.30, DOGM can be responsible for and prepare an environmental analysis even when the permit revision is determined not to constitute a mining plan modification as provided in 30 CFR 944.3 Article VI paragraph D.3. Such an environmental analysis could meet the lease requirement that an analysis be prepared for new mine site development. Otherwise, the proposal could require a mining plan modification because the terms of the federal lease, which must be met to be in compliance with the MLA, require an environmental analysis prior to approving the proposed permit revision. Other than the possible exception discussed above, none of the criteria for mine plan modification found in 30 CFR 746.18(2)(d) is met for the proposal.

If OSM determines that the proposed surface facilities must be treated as a mining plan modification OSM is responsible for compliance with the National Environmental Policy Act (NEPA) for the federal action to be taken by the Assistant Secretary. The memorandum of understanding between OSM and the Forest Service concerning mining plan approvals on Forest Service System Lands provides that OSM will "act as the lead agency responsible for assuring compliance with NEPA and request cooperation from the Forest Service as appropriate". Preparation of the NEPA document can be delegated to the State Regulatory Authority, but the regulations at 30 CFR 740.4(c)(7) indicate that OSM continues to be responsible for determining the scope, content and format of the NEPA compliance documents and making a determination whether and EIS is required. BLM strongly urges OSM to consider an environmental assessment (EA) rather than an EIS to fulfill the requirements of the lease. As discussed in the attached memorandum, BLM believes that the appropriate level of environmental analysis would be an EA which could be prepared by DOGM under their cooperative agreement procedures without requiring the Assistant Secretary to approve a mining plan modification. Much of the area where the surface facilities are proposed has been disturbed by previous mining activity and the Forest Plan has designated the area to be managed as a leasable minerals area where the emphasis is on making the land surface available for surface facilities. Because of these two facts, BLM believes that an EA is likely to support a finding on no significant impact which would eliminate the need for an EIS. Further, the extended time frame associated with the preparation of an EIS could compromise the orderly and timely development of the mine.

In summary, BLM does not believe that the proposed permit revision constitutes a mining plan modification. However, the lease requires that any mine site develop will require an environmental analysis to examine alternatives and mitigate conflicts. It is our position that this analysis can be conducted without requiring a mining plan modification. If you have any questions concerning our recommendation or the attached memorandum that summarizes our analysis of the regulatory requirements for a mining plan modification determination, please contact James Kohler of my Branch of Solid Minerals at (801) 539-4037.

Sincerely,

Kent Hoffman

Kent Hoffman
Deputy State Director, Lands and Minerals



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 3480
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Memorandum

To: Deputy State Director, Lands and Minerals

From: Chief, Branch of Solid Minerals *James F. Kohler*

Subject: Federal Mining Plan approval Recommendation for the PacifiCorp Deer Creek Mine – Application for Permit Revision, North Rilda Facilities Area

BLM has been requested to apply the criteria from 30 CFR 746.18(2)(d) to the proposed permit modification to the Pacificorp Deer Creek Mine Permit and provide our recommendation whether the permit revision constitutes a mining plan modification. Stan Perkes developed an evaluation of these criteria as follows:

Criterion 1: Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than the act.

BLM Response: The federal coal leases affected by the proposed revision contains a lease stipulation that provides:

“The limited area available for mine facilities at the coal outcrop, steep topography, adverse winter weather, and physical limitations on the size and design of the access road are factors which will determine the ultimate size of the surface are utilized for the mine. A site specific environmental analysis will be prepared for each new mine site development and for major modifications to existing developments to examine alternatives and mitigate conflicts (emphasis added)”.

This lease stipulation requires that a site specific environmental analysis needs to be conducted for a new mine site development such as the North Rilda surface facility. The stipulation was included with the lease from the Manti-LaSal Forest Plan as part of their consent under the Mineral Leasing Act as amended. It would seem that in order for the construction of the proposed surface facilities to be in accordance with the lease terms, an environmental analysis needs to be prepared for a new mine site development to evaluate alternatives and develop requirements for mitigation.



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This lease stipulation requires that a site specific environmental analysis needs to be conducted for a new mine site development such as the North Rilda surface facility. The stipulation was included with the lease from the Manti-LaSal Forest Plan as part of their consent under the Mineral Leasing Act as amended. It would seem that in order for the construction of the proposed surface facilities to be in accordance with the lease terms, an environmental analysis needs to be prepared for a new mine site development to evaluate alternatives and develop requirements for mitigation.

BLM believes that this analysis could be conducted by the Utah Division of Oil, Gas, and Mining (DOG M) as part of their review of the permit package as provided in 30 CFR 944.30 Article VI paragraph D.3. which provides:

Permit revisions, amendments, or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures outlined in paragraphs B.1. through B.5. of this Article.

Paragraph B.1. provides :

DOG M will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7).

30 CFR 740.4(c)(7) provides that the State Regulatory Authority (DOG M) can be delegated:

Preparation of documentation to comply with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 et seq.)

If an environmental analysis is appropriate for actions that do not constitute a mining plan modification, then it appears that an environmental analysis by DOGM could meet the requirements of the lease stipulation, the permit revision could be processed by DOGM without being considered a mine plan modification, and the action would be consistent with the requirements of the lease. If, however, a determination is made by OSM that there is no requirement for an environmental analysis for a permit revision unless it is determined to be a mining plan modification, then it appears that in order for the permit revision for the construction of the North Rilda surface facilities to be consistent with the terms of the lease, the proposal would have to be considered to be a mine plan modification. The Mineral Leasing Act requires that operations conducted on a federal coal lease be in accordance with the terms and conditions of the lease. Therefore, criterion 1 could possibly be met and the permit revision could be considered to constitute a mining plan modification.

Criterion 2: Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining.

BLM Response: The area proposed for the North Rilda surface facilities and the surrounding leased lands have not been designated as unsuitable for mining so this criterion does not apply.

Criterion 3: any change in the location or amount of coal to be mined, except where such change is the result of

- (1) A minor change in the amount of coal actually available for mining from the amount estimated or
- (2) An incidental boundary change

BLM Response: The proposal to construct the North Rilda surface facilities does not result in any appreciable change to the amount or location of coal that would be mined. Therefore this criterion is not met.

Criterion 4: Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time.

BLM Response: Surface coal mining and reclamation operations and a mining plan modification have already been approved on the coal leases where the surface facilities are proposed. Therefore this criterion does not apply. On July 29, 1994 Mining Plan approval was granted for lease U-06039 to "conduct underground coal mining activities and related surface activities. . . ". On August 12, 1997 Mining Plan approval was granted to PacifiCorp to conduct coal development and mining operations as described in the complete permit application package on Federal coal leases U-2810, and SL-051221. This extended coal mining operations on these Federal coal lands for the first time. The 1994 approval authorized construction of a mine breakout that included approximately 4.3 acres of surface disturbance and placed 280 feet of stream/drainages into culverts. In addition, 3500 feet of the old road was realigned and 1350 feet of new road was (4850 feet total) constructed under this approval.

Criterion 5: Any change which requires the preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act or 1969, 42 U.S. C. 4321 *et seq.*

BLM Response: BLM has reviewed its own guidance for Major Actions Normally Requiring an Environmental Impact Statement as defined in the Departmental Manual. These actions include Resource Management Plans; Wild and Scenic River designations; Regional Coal leasing; Coal Preference Right leases; approval for major facilities such as power plants petroleum refineries, and synfuel plants; rights of way for major reservoirs, canals, or pipelines; approval of operations that would result in liberation of radioactive materials; and approval of any mining operation where the area to be mined, including any area of disturbance is greater than 640 acres. The 10 acres of disturbance anticipated in this proposal clearly does not rise to the level of potential environmental impacts discussed above. BLM believes that the proper level of environmental analysis for the proposed North Rilda surface facilities would be an environmental assessment. The nature of the proposed disturbance and reclamation requirements provided in SMCRA would likely result in a finding of no significant impact (FONSI), and no Environmental Impact Statement should be required. The leasing action for the 4,680 tract (Mill Fork) that will be mined through these facilities was analyzed through an EA (Mill Fork Federal Coal Lease Tract UTU-71307, Environmental Assessment, Lease-By-Application No. 11, June 1997) and a Finding of No Significant Impact (FONSI) was signed by the FS and BLM in September 1997. BLM does not believe that the addition of an additional 10 acres of disturbance by this project (5 acres of which has been previously disturbed) and the removal of 1200 feet of riparian vegetation which will be reclaimed when mining is complete meets the threshold to require an EIS.

In BLM's opinion, the 516 DM 6, Appendix 8 criteria for determining that an EIS is required are not met and the proposed action does not require preparation of an EIS.

Criterion 6: Any change in the mining operations and reclamation plan that would result in a change in the post mining land use where the surface is federally owned.

BLM Response: The proposal to construct the North Rilda surface facilities does not result in any appreciable change to the amount or location of coal that would be mined. Therefore this criterion is not met.

Criterion 4: Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time.

BLM Response: Surface coal mining and reclamation operations and a mining plan modification have already been approved on the coal leases where the surface facilities are proposed. Therefore this criterion does not apply. On July 29, 1994 Mining Plan approval was granted for lease U-06039 to "conduct underground coal mining activities and related surface activities. . .". On August 12, 1997 Mining Plan approval was granted to PacifiCorp to conduct coal development and mining operations as described in the complete permit application package on Federal coal leases U-2810, and SL-051221. This extended coal mining operations on these Federal coal lands for the first time. The 1994 approval authorized construction of a mine breakout that included approximately 4.3 acres of surface disturbance and placed 280 feet of stream/drainages into culverts. In addition, 3500 feet of the old road was realigned and 1350 feet of new road was (4850 feet total) constructed under this approval.

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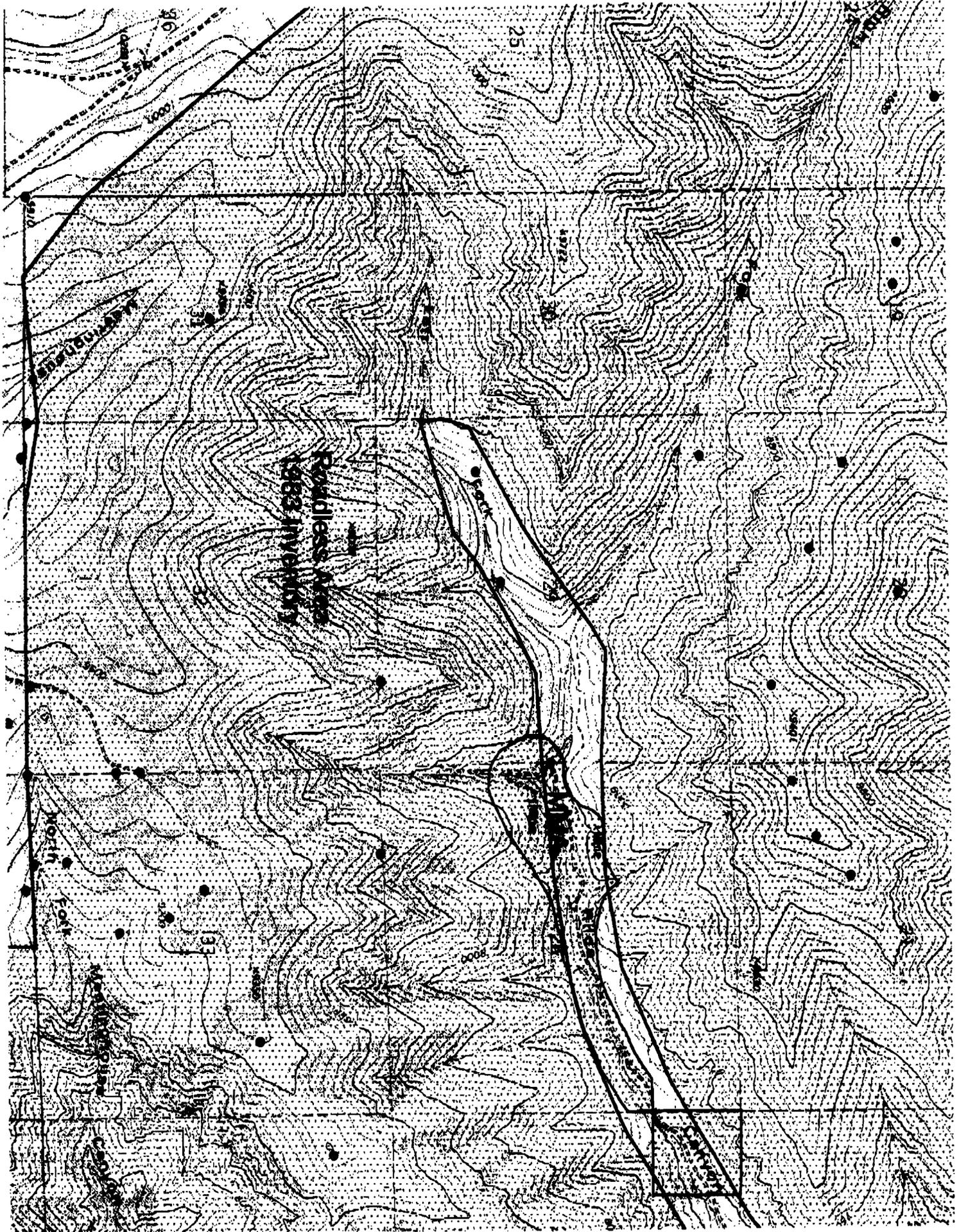
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In BLM's opinion, the 516 DM 6, Appendix 8 criteria for determining that an EIS is required are not met and the proposed action does not require preparation of an EIS.

Criterion 6: Any change in the mining operations and reclamation plan that would result in a change in the post mining land use where the surface is federally owned.

BLM Response: The surface of the area in question is owned by the Federal Government and is contained in the following Federal coal leases U-06039, SL-051221 and U-2810. The current Mining Plan states that the post mining land use will be wildlife and range. BLM does not believe the construction and eventual reclamation of these surface facilities will affect the long term post mining land use. Further, the coal lease grants the right to "construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease-rights-of-way which may be necessary and convenient in the exercise of the rights and privileges granted". This is also recognized by the Forest Service Manual that provides, "A mineral lease grants a dominant right to use the surface of the leased land for the production of the specified mineral, subject to existing rights. Under a lease, structures and other improvements necessary for operations may be constructed, such as roads, pipelines, and electric power lines, subject to all terms, conditions and stipulations of the lease. No special-use permit is required for such necessary improvements within lands under license, permit, or lease (FSM 2822.31e)".

With the possible exception of criterion 1, none of the criteria enumerated in 30 CFR 746.18(2)(d) appear to be met. A term of the federal leases where the proposed surface facilities are to be constructed requires an environmental analysis for each new mine site development. In order to meet this term, an environmental analysis will have to be prepared as provided in 30 CFR 944.30 Article VI paragraph D.3., if the permit revision is not a mining plan modification. If the permit revision is determined to be a mining plan modification, then the environmental analysis will be prepared to support the approval by the Assistant Secretary.



**MANAGEMENT PRESCRIPTION MMA
(EMPHASIS IS ON LEASABLE MINERALS DEVELOPMENT)**

Management emphasis is on making land surface available for existing and potential major mineral developments. This prescription is applied where the land surface is or will be used for facilities needed for the extraction of leasable minerals over an extended period. The areas associated with known, potential, development sites are included in this unit. Additional areas may be added to this unit as mines or fields are located and developed. As the developments are removed and restoration is completed, these areas may be changed to other appropriate management units.

In units where mineral development is pending, renewable resource activities strive to be compatible with the management goals of adjacent management units. Long-term investments, such as timber planting, generally are not made. However, short-term investments, such as range and wildlife revegetation projects, may be made on these units.

(EMPHASIS IS ON LEASABLE MINERAL DEVELOPMENT)

MANAGEMENT UNIT DIRECTION MMA

MANAGEMENT
ACTIVITIES

GENERAL
DIRECTION

STANDARDS &
GUIDELINES

CONTINUATION OF:
SOIL & WATER
RESOURCE
IMPROVEMENTS
(F03)

04 Stabilize streambanks which are damaged beyond natural recovery in a reasonable period with appropriate methods or procedures.

05 Minimize significant soil compaction and disturbance in riparian ecosystems. Allow use of heavy construction equipment during period when the soil is less susceptible to compaction or rutting.

06 Maintain or enhance the long-term productivity of soils within the riparian ecosystem.

MINERALS
MANAGEMENT
GENERAL
(G00)

01 Avoid and mitigate detrimental disturbance to the riparian area by mineral activities. Initiate timely and effective rehabilitation of disturbed sites.

02 Where possible, locate mineral activities outside the riparian unit.

a. Locate drill sites and mud pits outside the riparian area unless alternate locations have been reviewed and rejected. If location is unavoidable, seal and dike all pits to prevent leakage.

b. Reclaim disturbed site as soon as possible after use is discontinued.

c. Revegetate or establish vegetative cover to levels that will provide soil surface protection and prevent erosion..

d. Provide surface protection from storm-flow and snowmelt runoff events.

03 Design and locate settling ponds to prevent washout during high water. Locate settling ponds outside of the active channel. Restore channel changes to hydraulic geometry standards for each stream type.

a. Permit diversion activities within the riparian unit where technology is available to maintain water quality standards, sediment threshold limits, instream flow standards, vegetation, and fish and wildlife cover.

III-72

Manti LaSal National Forest Roadless Inventory Data

Available as - [[Outline](#)]

Metadata:

- [Identification Information](#)
- [Spatial Data Organization Information](#)
- [Distribution Information](#)
- [Metadata Reference Information](#)
- [Entity and Attribute Information](#)

Identification_Information:

Citation:

Citation_Information:

Originator: Manti LaSal National Forest

Publication_Date: 19990304

Title: Manti LaSal National Forest Roadless Inventory Data

Geospatial_Data_Presentation_Form: map

Publication_Information:

Publication_Place: Price, Utah

Publisher: Manti LaSal National Forest

Online_Linkage: <<http://www.fs.fed.us/r4/mantilasal/downloads/rdls15e.e00.gz>>

Description:

Abstract:

Inventories of roadless areas of the Manti-La Sal National Forest are mapped in the "McGuire, 1979, Roadless and Undeveloped Area Evaluation RARE II Final Environmental Assessment: USDA, Forest Service" and Manti-La Sal National Forest planning record (Redbooks, 1983-86). The coverage called RDLS15E records both RARE II and plan record inventory units by identification numbers. The shapes of the units approximate those in the plan record, 1:125,000 scale maps. The Forest Plan Record shows roadless areas that were included in RAREII and roadless areas identified during 1983 roadless reevaluation effort. Attributing is used to distinguish these categories. The coverage, RDLS15E, is found in the following workspace: /gisforest/status/roadless/

Purpose:

The purpose of this layer is to approximate in digital form the shape and position of inventoried roadless areas as shown in the Forest Plan Record (1983-1986). Additionally, the layer is intended to record both the RAREII and Forest Plan Record (1983-1986) identification numbers. With this information the roadless units can be overlaid with other layers to see relationships to current and proposed projects.

Supplemental_Information:

PROCESS Most of the work was digitized on screen using landlines, roads, forest

Manti LaSal National Forest Roadless Inventory Data

Page 2 of 4

boundary, and in some cases, topography as background layers. An attempt was made to replicate the shape and position of the roadless area as depicted in the Forest Plan Record. For most areas the accuracy would be approximately +/- 0.1 mile. *****
Spatial Reference Information (Beg) ***** Projection Parameters UTM ZONE 12
UNITS METERS NAD27 Spatial Information Vector: Scale of original/hardcopy
map: 1:125,000 Feature Type: polygon ***** Spatial Reference Information (End)

Time_Period_of_Content:**Time_Period_Information:****Range_of_Dates/Times:****Beginning_Date:** 19980501**Ending_Date:** 19990304**Currentness_Reference:** ground condition**Status:****Progress:** In work**Maintenance_and_Update_Frequency:** As needed**Spatial_Domain:****Bounding_Coordinates:****West_Bounding_Coordinate:** -112.403**East_Bounding_Coordinate:** -108.638**North_Bounding_Coordinate:** 40.332**South_Bounding_Coordinate:** 37.212**Keywords:****Theme:****Theme_Keyword_Thesaurus:** NA**Theme_Keyword:** roadless**Theme_Keyword:** inventory**Theme_Keyword:** roads**Theme_Keyword:** rare II**Theme_Keyword:** 1983 data**Theme_Keyword:** CFF Codes**Theme_Keyword:** CFF data**Place:****Place_Keyword_Thesaurus:** NA**Place_Keyword:** Manti LaSal National Forest**Place_Keyword:** Monticello**Place_Keyword:** Moab**Place_Keyword:** Price**Place_Keyword:** Ferron**Place_Keyword:** SanPitch**Place_Keyword:** Sanpete**Place_Keyword:** Emery**Place_Keyword:** Grand**Place_Keyword:** Carbon**Place_Keyword:** SanJuan**Temporal:****Temporal_Keyword_Thesaurus:** NA**Temporal_Keyword:** 1998-1999**Access_Constraints:**

User needs to exercise caution regarding the spatial accuracy of these data (+/- .1 miles). The source scale of 1:125,000 is much broader than typical 1:24,000 scale data commonly used.

Features cannot be expected to align. The RAREII and Planning Record Documents are ultimately the official version of inventoried roadless areas.

Use_Constraints:

Data may be viewed and used by any and all entities, upon request, however, data should not be changed or modified by anyone other than the Manti LaSal National Forest. The USFS does not guarantee the accuracy of this data.

Spatial_Data_Organization_Information:

Direct_Spatial_Reference_Method: Vector

Distribution_Information:

Distributor:

Contact_Information:

Contact_Person_Primary:

Contact_Person: Pete Kilbourne

Contact_Organization: Manti-La Sal National Forest

Contact_Address:

Address_Type: Mailing and Physical Address

Address: 599 West Price River Drive

City: Price

State_or_Province: Utah

Postal_Code: 84501

Country: USA

Contact_Voice_Telephone: 435-636-3526

Contact_Facsimile_Telephone: 435-637-4940

Contact_Electronic_Mail_Address: pkilbour/r4_m-1@fs.fed.us

Distribution_Liability:

DATA CONTENT AND USE DISCLAIMER The USDA Forest Service, Manti LaSal National Forest, manages much of the data as a service to users of digital geographic data. The USFS is in no way condoning or endorsing the application of these data for any given purpose. It is the sole responsibility of the user to determine whether or not the data are suitable for the intended purpose. It is also the obligation of the user to apply those data in an appropriate and conscientious manner. The USFS provides no warranty, no accepts any liability occurring from any incorrect, incomplete, or misleading data, or from any incorrect, incomplete, or misleading use of these data. Much of the USFS data are based on and maintained with ARC/INFO software developed by Environmental Systems Research Institute (ESRI). Much of the information presented uses conventions and terms popularized by ARC/INFO and its user community. USFS in no way represents the interests of ESRI nor acts as an agent for them.

Metadata_Reference_Information:

Metadata_Date: 19990304

Metadata_Contact:

Contact_Information:

Contact_Person_Primary:

Manti LaSal National Forest Roadless Inventory Data

Page 4 of 4

Contact_Person: Pete Kilbourne*Contact_Organization:* Manti-La Sal National Forest*Contact_Address:**Address_Type:* Mailing and Physical Address*Address:* 599 West Price River Drive*City:* Price*State_or_Province:* Utah*Postal_Code:* 84501*Country:* USA*Contact_Voice_Telephone:* 435-636-3526*Contact_Facsimile_Telephone:* 435-637-4940*Contact_Electronic_Mail_Address:* pkilbour/r4_m-1@fs.fed.us*Metadata_Standard_Name:* FGDC Content Standards for Digital Geospatial Metadata*Metadata_Standard_Version:* FGDC-STD-001-1998*Entity_and_Attribute_Information:**Overview_Description:**Entity_and_Attribute_Overview:*

Attributes: Items for rdls15e.pat: NAME 25 25 C COMMENTS 100 100 C

RAREII_NO 10 10 C PLANRECORD_NO 10 10 C OTHERNO 10 10 C Where:

NAME: roadless area name COMMENTS: comments RAREII_NO: identifying value for roadless area as described in 1983 Forest Plan Record, e.g. 4-436

PLANRECORD_NO: identifying value for roadless area as described in 1983 Forest Plan Record, e.g. 10436. OTHERNO: identifying value for roadless area on adjacent forest. If RAREII_NO exists, it indicates that the area was identified during the RAREII process in 1979. If RAREII_NO does not exist then area was identified during 1983 roadless reevaluation effort.

Entity_and_Attribute_Detail_Citation:[Irrareport.htm](#) contains values for 'name' and 'comment' as well as an acreage summaryGenerated by mp version 2.4.10 on Thu Dec 23 14:43:26 1999