0110

Incoming
C0150018
CC: PamG

United States Department of Agriculture
Forest Service
Manti-La Sal National Forest

Supervisor's Office
599 West Price River Drive
Price, UT 84501
Phone # (435) 637-2817
Fax # (435) 637-4940

1950/2820-4
Date: August 29, 2005

RECEIVED
AUG 31 2005
DIV. OF OIL, GAS & MINING

Dear Interested Party:

Enclosed is a copy of the Decision Notice/Finding of No Significant Impact (DN/FONSI) to consent/concur to the terms of the mining plan approval and post mining land use for Federal Coal Leases U-06039, U-2810, SL-050862, and SL-051221. The leaseholder (PacifiCorp) has proposed to construct new surface facilities in Rilda Canyon for their Deer Creek Mine located in Emery County, Utah. The new facilities would include a ventilation fan, mine entry for personnel and materials, bath house, parking lot, office, shop, top soil storage area, and sediment ponds. An Environmental Assessment has been prepared by the USDI-Office of Surface Mining, in cooperation with the Forest Service and the Bureau of Land Management, to analyze the proposal. Rod Player, Acting Forest Supervisor of the Manti-La Sal National Forest, has signed a Decision Notice/Finding of No Significant Impact (DN/FONSI) to consent/concur to the terms of the mining plan approval and post-mining land use (Alternative 1, Approval of the Proposed Permit Application Package with Conditions) on August 25, 2005. Under Alternative 1, the Assistant Secretary of the Interior would approve PacifiCorp's proposed Mine Plan.

This decision is subject to appeal pursuant to 36 CFR part 215.11. Individuals or organizations that submitted substantive comments during the comment period may appeal this decision. Appeals must meet the content requirements of 36 CFR 215.14, as published in the Federal Register on June 4, 2003.

Appeals should be sent to: Regional Forster, Appeal Deciding Officer, 324 25th Street, Ogden, UT 84401; phone: (801) 625-5605, fax: (801) 625-5277; e-mail: appeals-intermtn-regional-office@fs.fed.us. E-mailed appeals must be submitted in MS Word (*.doc) or rich text format (*.rtf). Appeals may also be delivered to the above address, during regular business hours of 8:00 a.m. to 4:30 p.m, Monday-Friday, excluding federal holidays. The appeal, including any attachments, must be filed with the Appeal Deciding Officer within 45 days following the date of publication of this legal notice in the *Sun Advocate* The date of publication of this legal notice in the *Sun Advocate* is the exclusive means for calculating the time to file an appeal. Those wishing to file an appeal should not rely upon dates or timeframe information provided by any other source.

If no appeal is received within the 45-day time period, implementation of this decision may begin on, but not before, the 5th business day following the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 business days following the date of appeal disposition.

This decision is also subject to appeal pursuant to 36 CFR 251.82. Notice of appeal must be postmarked or received by the Appeal Reviewing Officer within 45 days of the date of this decision. A notice of appeal, including the reasons for appeal, must be filed with the Regional Forester, Intermountain Region, Federal Building, 324 25th Street, Ogden, UT 84401. A copy of the notice of appeal must be filed simultaneously with Alice Carlton, Forest Supervisor, 599 West Price River Drive, Price, Utah 84501. Appeals must meet the content requirements of 36 CFR 251.90.

If additional information is needed, please contact Dale Harber at (435) 636-3548.

Sincerely,

ALICE B. CARLTON
Forest Supervisor

Enclosure

Decision Notice

& Finding of No Significant Impact

Mining Plan Modification, Federal Coal Leases U-06039, U-2810, SL-050862, and SL-051221

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

Decision and Reasons for the Decision

Background

PacifiCorp has proposed to construct new surface facilities in Rilda Canyon for their Deer Creek Mine located in Emery County, Utah. They have identified a need for access closer to the current mining area to reduce travel time for miners, provide for the safety of personnel, and for additional air intake to meet Mine Safety and Health Administration (MSHA) requirements. The USDI – Office of Surface Mining (OSM) has determined that this action constitutes a mining plan modification. An environmental assessment (EA) has been prepared by OSM in cooperation with the USDA – Forest Service and the USDI – Bureau of Land Management. The EA documents the analysis of two alternatives to meet this need.

As the surface management agency, the Forest Service must consent or concur to the post-mining land use and to the terms of the mining plan approval, under the authorities of the National Forest Management Act of 1976, the Federal Coal Leasing Amendments Act of 1976, and Federal Regulations contained in 30 CFR 740.4. 30 CFR 740.4(c)(2) states that one of OSM's responsibilities is:

> "Consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations."

30 CFR 740.4(e)(4) states that the Federal land management agency is responsible for:

> "Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mining plan approval."

The Utah Division of Oil, Gas and Mining has issued a permit for the proposal and transmitted the Permit Application Package/Mine Plan and State permit to the Office of Surface Mining for review and issuance of a Mine Plan Decision Document by the Department of the Interior.

Decision

Based upon my review of the alternatives, I have decided to consent/concur to the terms of the mining plan approval and post-mining land use (Alternative 1, Approval of the Proposed Permit Application Package with Conditions). Under Alternative 1, the Assistant Secretary of the Interior would approve PacifiCorp's proposed Mine Plan, for expansion of the Deer Creek Mine surface facilities in Rilda Canyon onto National Forest System lands administered by the Manti-La Sal National Forest. These facilities would aid in mining Federal Coal Leases U-06039, U-2810, SL-050862, and SL-051221. PacifiCorp has the right to reasonable access to mine the coal in these leases. Mitigations needed to protect non-mineral interests, and assure consistency with lease stipulations and Forest Plan direction, have been designed into the Permit Application Package or required by the Utah Division of Oil, Gas and Mining in the mining permit.

When compared to the other alternatives this alternative will allow PacifiCorp to construct facilities necessary to mine coal from their Federal leases while protecting the other resources of the Manti-La Sal National Forest. This alternative meets requirements of the National Forest Management Act of 1976, the Federal Coal Leasing Amendments Act of 1975, and 30 CFR 740.4. It is consistent with direction in the Manti-La Sal National Forest Land and Resource Plan, as amended, and is consistent with stipulations in the coal leases.

Other Alternatives Considered

In addition to the selected alternative, I considered one other alternative, the No Action alternative (Alternative 2). Under the No Action alternative, the proposed mining plan would not be approved and management of the area would continue in its current state. A comparison of these alternatives can be found in the EA on pages 7 and 31 through 50.

Public Involvement

PacifiCorp submitted a permit revision application on December 21, 2004, proposing to construct new surface mine facilities in Rilda Canyon. Scoping letters were mailed to 49 Federal and state agencies and other interested parties on February 3, 2005. Notices were placed in the *Sun Advocate* and *Emery County Progress* newspapers on April 12, and August 11, 2004. Public meetings discussing the proposed action were held in Huntington, Utah, on May 12 and August 11, 2004. Fourteen responses were received from the scoping letters and the public meetings.

Using the comments from the public and internal scoping, the interdisciplinary team identified several issues regarding the effects of the proposed action (see EA, pages 6-8). Main issues of concern included potential impacts to wildlife and to surface and groundwater hydrology. To address these concerns, the ID Team evaluated the alternatives described above.

Finding of No Significant Impact

After considering the environmental effects described in the EA, I have determined that these actions will not have a significant effect on the quality of the human environment considering the context and intensity of impacts (40 CFR 1508.27). Thus, an environmental impact statement will not be prepared. I base by finding on the following:

1. My finding of no significant environmenal effects is not biased by the beneficial effects of the action. My finding is based on an evaluation of both the benefits (safety for miners and economic benefits to PacifiCorp) and impacts to resources (see EA, page 7).

2. There will be no significant effects on public health and safety (see EA, Chapter 4). There will be moderate, short term impacts to big game, negligible, short term impacts to other game species and water quality, and minor, short term impacts to noise, air quality, recreation, and socioeconomics (see EA, page 7).

3. There will be no significant effects on unique characteristics of the area. The only unique feature of the project area is cottonwood riparian ecosystem along Rilda Creek, which is being maintained by moving the complete facility to the north and west to avoid the riparian area (see EA Sec. 2.3.2, page 12).

4. The effects on the quality of the human environment are not likely to be highly controversial. Because of the level of coal mining that has occurred on the Forest over many years, there is no known scientific controversy over the impacts of the project. The Genwal Mine was expanded to a similar facility on private land in Crandall Canyon, approximately 4 miles north of Rilda Canyon. Impacts are expected to be considerably less in Rilda Canyon because the facility will be constructed outside the area of the stream and there will be no loadout facility.

5. We have considerable experience with the types of activities to be implemented. There are 6 large coal mines on the Forest, including 3 located in narrow canyons (Genwal, SUFCO, and Trail Mountain). The effects analysis shows the effects are not uncertain, and do not involve unique or unknown risk (see EA, Chapter 4).

6. The action will not establish a precedent for future actions with significant effects, because only one specific facility is being approved. Additional environmental analyses would be required for any future proposals.

7. The cumulative impacts are not significant (see EA pages 52-54).

8. The action will have no significant adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, because no historic properties have been identified within the proposal area (see EA pages 45-46). The action will also not cause loss or destruction of significant scientific, cultural, or historical resources, because these resources are not present within the proposal area (see EA pages 45-46).

The Utah State Historic Preservation Officer has been consulted and has concurred with these determinations (copy in Project Record File).

9. The action will not adversely affect any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973 (see EA pages 32-33). The U.S. Fish and Wildlife Service has concurred with these determinations. Impacts to management indicator species is likely to be displacement of some individuals, but the populations as a whole would not be affected (Wildlife Resources Report, 2005).

10. The action will not violate Federal, State, or local laws or requirements for the protection of the environment. Applicable laws and regulations were consdiered in the EA (see EA pages 4-5). The action is consistent with the Manti-La Sal National Forest Land and Resource Management Plan (see EA page 5).

Findings Required by Other Laws and Regulations

This decision to consent to the post-mining land use and to the terms of the mining plan approval (Alternative 1) is consistent with the intent of the forest plan's long term goals and objectives listed on pages III-2 through III-6. The project was designed in conformance with land and resource management plan standards and incorporates appropriate land and resource management plan direction for minerals management (Land and Resource Management Plan, pages III-80 to III-82). The project area is within a Minerals Management Unit and a Range Mangement Unit. The Minerals Management Unit also encompasses a Riparian Area.

Minerals Management Unit

The Forest Plan guidance for a Minerals Management Unit is:

> "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, or 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."

This action is consistent with the Forest Plan guidance for a Minerals Management Unit by making the surface area available for a facility necessary for the extraction of leased

coal. The Forest Service, other agencies, and PacifiCorp have cooperated to develop this facility with the least possible impacts on other resources in the area.

Range Management Unit

The Forest Plan direction for minerals management activities within a Range Management Unit are:

> "01 Provide appropriate mitigation measures to assure continued livestock access and use.
>
> 02 Those authorized to conduct developments will be required to replace losses through appropriate mitigations, where a site-specific development adversely affects long-term production or management."

This action is consistent with the Forest Plan guidance for a Range Management Unit. The area is still available for livestock use. Lease stipulations require the lessee to replace range facilities damaged by their activities.

Riparian Management Unit

The Forest Plan direction for minerals management activities within a Riparian Management Unit are:

> "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.
>
> 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."

This action is consistent with the Forest Plan guidance for a Riparian Management Unit. In order to minimize the effects to both the Riparian Management Unit, and the General Winter Range Management Unit just east of the project area, the Forest Service, other agencies, and PacifiCorp worked cooperatively to relocate facilities out of the riparian zone and as far from the General Winter Range Unit as possible to minimize impacts.

Other Laws

This decision is consistent with the National Forest Management Act, as described above in consistency with the Forest Plan.

This decision is consistent with the Clean Water Act. All water on the disturbed area is isolated from other surface waters, and is only discharged under the terms of a UPDES (Utah Pollution Discharge Elimination System) permit. Best management practices are

used in construction. Compliance with SMCRA (Surface Mining Control and Reclamation Act) requirements also assure compliance with the Clean Water Act.

Compliance with the Endangered Species Act is documented in the Biological Assessment/Biological Evaluation and Wildlife Resources Report prepared for this project.

Implementation Date

This project may be implemented 5 business days after the latest appeal period ends, if there is no appeal. If there is an appeal and this decision is upheld, it may be implemented on the 15th business day after the decision is upheld.

Administrative Review or Appeal Opportunities

This decision is subject to appeal in accordance with 36 CFR 215.11. A notice of appeal must be in writing and clearly state that it is a Notice of Appeal being filed in pursuant to 36 CFR 215.7. Appeals must be filed with Jack Troyer, Regional Forester, 324 25th Street, Ogden, Utah 84401, within 45 days of the date of Legal Notice of Decision in the *Sun Advocate* newspaper.

This decision is subject to appeal pursuant to 36 CFR 251.82. Notice of appeal must be postmarked or received by the Appeal Reviewing Officer within 45 days of the date of this decision. A notice of appeal, including the reasons for appeal, must be filed with the Regional Forester, Intermountain Region, Federal Building, 324-25th Street, Ogden, Utah 84401. A copy of the notice of appeal must be filed simultaneously with Alice Carlton, Forest Supervisor, 599 West Price River Drive, Price, Utah 84501. Appeals must meet the content requirements of 36 CFR 251.90.

Contact

For additional information concerning this decision or the Forest Service appeal process, contact Dale Harber, Manti-La Sal National Forest, Supervisor's Office, 599 W. Price River Dr., Price, Utah 84501, phone (435) 636-3548.

for Rod Plaza 8/25/2005

Alice B. Carlton
Forest Supervisor

Date

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDAs TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202)720-6382 (TDD). USDA is an equal opportunity provider and employer."